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AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore [Mr. SCHIFF] at 10 o'clock and 26 minutes a.m.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

As we seek to carry on our responsibilities, remind us, gracious God, of the need for righteousness and respect for every person; as we pursue the path of justice, remind us of Your gift of mercy; as we aspire to the gifts of liberty, remind us of the heavenly vision. O Creator of all the Earth, O Judge of nations and people, we pray that we will use the abilities that You have given us in ways that reflect Your word. Teach us, O God, to be humble in our service and steadfast in our commitment to the good heritage of our Nation. This is our earnest prayer. Amen.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Mississippi [Mr. MONTGOMERY] come forward and lead the House in the Pledge of Allegiance.

Mr. MONTGOMERY led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 1295. An act to amend the Trademark Act of 1946 to make certain revisions relating to the protection of famous marks.

H.R. 2203. An act to reauthorize the tied aid credit program of the Export-Import Bank of the United States, and to allow the Export-Import Bank to conduct a demonstration project.

ASSURING ALL FEDERAL EMPLOYEES WORK AND ARE PAID

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent for the immediate consideration of the Senate bill (S. 1508) to assure that all Federal employees work and are paid.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

Mr. EMERSON. Mr. Speaker, reserving the right to object, I yield to the gentleman from Missouri [Mr. GEPHARDT].

Mr. GEPHARDT. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, it is my purpose today to try to bring up the bill that has already been passed in the Senate, S. 1508, which as I understand it would put the Federal employees back to work, promising that they would be paid retroactively immediately and would get the Government up and running right away without any other conditions which might interrupt the passage of this legislation.

Mr. EMERSON. Mr. Speaker, reclaiming my time, I yield to the gentleman from Maryland [Mr. HOYER].

Mr. HOYER. Mr. Speaker, I thank the gentleman from Missouri [Mr. EMERSON] for yielding to me.

Mr. Speaker, we have now been in a crisis mode for some weeks, the longest that Federal employees have been placed at risk in the history of our country. Families are disrupted and in fear. Fathers and mothers are wondering how they are going to pay January's mortgage payment, how they are going to keep their families together, how they are going to run their lives. They realize, as every American realizes, that there is a confrontation between the White House and the Congress, between Republicans and Democrats on how to resolve the reconciliation bill, the so-called budget bill.

What the majority leader of the Senate did, Senator DOLE, was to say to the Senate, ''As we debate the differences between us, let us not shortchange either the Federal workers or the American taxpayer. Let us have our workers come to work. Let us have them be perceived as essential for doing America's business,'' and then, because the Speaker and the majority leader have said we are going to do it, we will pay them when we come out of this crisis.

That is appropriate to do. It is important to give them that confidence. But it is also important for the American taxpayer that they work, and they want to work. I have had literally thousands of calls to my office of people who want just simply to do their job, to go to work, to contribute, not to have a backlog, and to give their families confidence in the new year.

Mr. Speaker, this request of the minority leader, S. 1508, is a request by our side to unanimously pass what the majority leader, the Republican leader of the U.S. Senate, has put before the Senate and the Senate has passed overwhelmingly. I would hope that my friend, the gentleman from Missouri [Mr. EMERSON], would not object, because it is my understanding that the alternative to this is placing S. 1508 on the unanimous-consent calendar for

the purposes of amending it and sending it back to the Senate with something that the Senate has said they will not take. I do not think our side is going to object to that, but it is a false hope, I fear, for our Federal employees, and for their families.

Mr. EMERSON. Reclaiming my time, Mr. Speaker, I yield to the gentleman from Virginia [Mr. MORAN].

Mr. MORAN. Mr. Speaker, I thank my good and very decent friend, the gentleman from Missouri [Mr. EMERSON], for yielding to me.

Mr. Speaker, 1995 should be the year of the Federal employee. From the bombing in Oklahoma City to the fact that we have now reduced 117,000 jobs from the Federal Government, and now to the longest furlough, shutdown, in the history of the Federal Government, Federal employees have been punished through no fault of their own. It is time we brought an end to the real suffering that these families are experiencing. And not only is it the anxiety, it is what we have done to the perception of public service.

A recent poll was taken of all the honor roll students in the country. Only 10 percent chose public service as a career they wanted to enter. This may be why, what we in the Congress have done to the Federal civil servant. So I would hope that we would seize this opportunity before us right now to accept legislation that passed by unanimous consent in the Senate.

If we agree to this, we can now put Federal employees back on the job. By January 3 we will have paid out or agreed to pay out $1.6 billion to Federal employees for not performing work on the job. This is just to the Federal employees who have been furloughed, who have been locked out of their jobs. Some Federal employees have tried to get back into their offices, because they felt guilty about the fact that their colleagues were having to do their work. They were told it is illegal even to volunteer to perform their job.

They do not want to get paid for not working, they want to work. They should get paid for working. What this will do will ensure that they are put back on the job. All Federal employees will be considered essential employees, and then we will ensure that they get compensated for their work. This is the right thing to do, it is overdue.

I appreciate the fact that we have colleagues on the other side who would support this, and will recognize the value of civil servants. I appreciate the leader of my party offering this amendment. I would hope that we would now agree to it, by unanimous consent, just as was done by the Senate, and Federal employees can be back on the job by Tuesday, if we will do this.

Mr. EMERSON. Reclaiming my time, Mr. Speaker, I yield to the distinguished gentleman from Fairfax County, VA [Mr. DAVIS].

Mr. DAVIS. Mr. Speaker, I appreciate the gentleman yielding to me.

I just want to rise in support of the minority leader's request. We have introduced a companion bill to S. 1508 which the gentlewoman from Maryland [Mrs. MORELLA], the gentleman from Virginia [Mr. WOLF], the gentleman from Virginia [Mr. MORAN], the gentleman from Maryland [Mr. HOYER], and others have cosponsored here. This would simply call that up. This would put Federal employees back to work. We have said we are going to pay them. Let us let them earn their way the way they would like to do.

It just seems that if we want to recruit and maintain the best and brightest for Federal service, given the fact that they are undergoing downsizing and their benefits are being cut, these furloughs and unpaid Christmases are just not the way to go. This will put them back to work. I support the request.

Mr. EMERSON. Reclaiming my time, Mr. Speaker, I yield to the gentlewoman from Montgomery County, MD [Mrs. MORELLA].

Mrs. MORELLA. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I think it is very important that we let our people go back to work. It has been much too long that we have had this partial shutdown No. 2. I know that Federal employees want to go back to work. I know many of them, despite the fact that they are furloughed, are showing up at laboratories and going in the back entrances in order to perform the critical work. I know of two-parent families where both of them are furloughed because one is with Commerce and one is with Labor, or one is with Education, or the other areas where we have not come up with appropriations for them.

It also has a critical adverse effect, consequences for the private sector, too. So many people are touched by this. It is important that we get our Federal employees back to work so they recognize that they are essential, they are excepted from furloughs, they are emergency, they are important to our country. What has happened with this shutdown has been demoralizing at the very least, so I support getting our Federal employees back to work, and this bill that we are looking at today mirrors exactly the bill that we put in on Wednesday.

Mr. EMERSON. Reclaiming my time, Mr. Speaker, I yield to the gentleman from Fairfax County, VA [Mr. WOLF].

Mr. WOLF. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I rise in support of this, too. I will have more to say a little later about the whole issue, but this would get Federal employees back, and when we think in terms of Federal employees, I think it is important to think in terms of the mission, perhaps; the FBI agent, that if everyone here had a husband or a wife or a son or a daughter kidnaped today, the first person you would call would not be your local police, it would be the FBI, or a Federal employee.

Members claim that they are concerned about drugs in the schools and drugs coming out of Mexico and places like that, but the people that we look to to keep drugs out of the country are the DEA agents, all Federal employees. My mom and dad both died of cancer. Cancer runs in my family. The cancer researcher at NIH is a Federal employee.

I think we have gotten so wrapped up, focusing on the words ''Federal employee,'' and forgetting the individual mission. Who in the country wants to not have cancer researchers working at NIH? Who does not want the DEA to be active and involved to stop drugs coming in? Who does not want the FBI to be on the job and working? I heard the Chaplain talk about mercy and justice. I think this is an opportunity for mercy and justice. This resolution and the next resolution would get us on the way.

The last thing I want to say as a Republican and as a conservative Republican, and I am very proud to be called a conservative Republican, and I send my entire voting record out to every household in my district, there is nothing inconsistent, there is nothing inconsistent with being a strong supporter of a balanced budget in 7 years, scored by the CBO, and putting Federal employees back to work. There is nothing, nothing inconsistent. The day people believe there is an inconsistency there, then I think the thinking in this country has gone astray. To put an FBI agent back, a cancer researcher back, a DEA researcher back, a Social Security worker back is not inconsistent.

I am committed and have voted to see that we bring a balanced budget in, scored by the CBO, and that in the process, we do not do the other thing. As we hear, the end never justifies the means. The ends never, never justify the means.

Mr. EMERSON. Mr. Speaker, in consideration of certain procedural amenities that must be followed, I reluctantly object.

The SPEAKER pro tempore (Mr. SCHIFF). Objection is heard.

ASSURING THAT ALL FEDERAL EMPLOYEES WORK AND ARE PAID

Mr. DAVIS. Mr. Speaker, I ask unanimous consent that it be in order to consider in the House the Senate bill (S. 1508) to assure that all Federal employees work and are paid; that the amendment I have placed in the bill be considered as read and adopted, and that the bill, as amended, be considered as passed.

The Clerk read the title of the Senate bill.

The text of the Senate bill, as amended, is as follows:

S. 1508

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ALL FEDERAL EMPLOYEES DEEMED TO BE ESSENTIAL EMPLOYEES.

(a) IN GENERAL.—Section 1342 of title 31, United States Code, is amended for the period December 15, 1995 through February 1, 1996—

(1) by inserting after the first sentence ''All officers and employees of the United States Government or the District of Columbia government shall be deemed to be performing services relating to emergencies involving the safety of human life or the protection of property.''; and

(2) by striking out the last sentence.

AMENDMENT TO S. 1508 OFFERED BY MR. DAVIS OF VIRGINIA

At the end of the bill, add the following:

SEC. 2. EXTENSION OF AUTHORITIES.

(a) IN GENERAL.—Section 583(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236), as amended by Public Law 104–47, is amended by striking ''December 31, 1995'' and inserting ''March 31, 1996''.

(b) CONSULTATION.—For purposes of any exercise of the authority provided in section 583(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236) prior to January 10, 1996, the written policy justification dated December 1, 1995, and submitted to the Congress in accordance with section 583(b)(1) of such Act, shall be deemed to satisfy the requirements of section 583(b)(1) of such Act.

SEC. 3. CONGRESSIONAL CONSIDERATION OF THE BALANCED BUDGET BILL.

(a) INTRODUCTION OF THE BALANCED BUDGET BILL.—The balanced budget bill, which is described in subsection (e), shall be introduced in both the House of Representatives and the Senate on the same day. In the House, the bill shall be introduced by the Chairman of the Budget Committee of the House. In the Senate, the bill shall be introduced by the Majority Leader, after consultation with the Minority Leader.

(b) CONSIDERATION OF THE BALANCED BUDGET BILL IN THE HOUSE.—Consideration of the balanced budget bill shall be made in order pursuant to a special order reported by the Committee on Rules.

(c) CONSIDERATION OF THE BALANCED BUDGET BILL IN THE SENATE.—

(1) PLACED ON THE CALENDAR.—The balanced budget bill introduced in the Senate shall not be referred to committee but shall be placed directly on the Calendar.

(2) MOTION TO PROCEED.—The motion to proceed to the balanced budget bill shall not be debatable and the bill may be proceeded to at any time after it is placed on the Calendar.

(3) RECONCILIATION PROCEDURES.—The Senate shall consider the balanced budget bill as if it were a reconciliation bill pursuant to section 310 of the Congressional Budget Act of 1974, with the following exceptions:

(A) A motion to recommit shall not be in order.

(B) All amendments proposed to the balanced budget bill shall be considered as having been read in full, once the amendment is identified by sponsor and number.

(C) Debate in the Senate on the balanced budget bill, and all amendments, thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours. Upon expiration of the 10 hours of debate, without intervening action, the Senate shall proceed to vote on the final disposition of the balanced budget bill.

(D) If the Senate has received from the House the balanced budget bill introduced under subsection (a) prior to the vote on final disposition of the Senate bill, the following procedures shall apply:

(i) The balanced budget bill received from the House shall not be referred to committee and shall be placed on the Calendar.

(ii) The Senate shall proceed to and consider the balanced budget bill introduced in the Senate, however—

(I) the vote on final passage shall be on the balanced budget bill received from the House, if it is identical to the balanced budget bill then pending for the vote on final disposition in the Senate; or

(II) if the balanced budget bill received from the House is not identical to the balanced budget bill then pending for the vote on final disposition in the Senate, following third reading of the Senate bill, the Senate shall, without intervening action or debate, proceed to the House balanced budget bill, strike all after the Enacting Clause, substitute the text of the Senate bill as taken to third reading, adopt the Senate amendment, and vote on the final disposition of the House balanced budget bill, as amended.

(E) Consideration of House Message shall be limited to 5 hours. Debate on any motion necessary to dispose of a House Message on the balanced budget bill shall be limited to 1 hour and debate on any amendment to such motion shall be limited to 30 minutes.

(F) Upon proceeding to any conference report on the balanced budget bill, the bill shall be considered as read. Debate on any conference report on the balanced budget bill shall be limited to 5 hours.

(4) WAIVER OF SECTION 306.—Section 306 of the Congressional Budget Act shall not apply to the consideration of the balanced budget bill.

(d) REVISIONS TO AGGREGATES, ALLOCATIONS, AND DISCRETIONARY SPENDING LIMITS.—

(1) AUTHORITY TO ADJUST AGGREGATES AND DISCRETIONARY LIMITS.—For purposes of enforcement under the Congressional Budget Act of 1974 and H. Con. Res. 67 (One Hundred Fourth Congress), upon the introduction of the balanced budget bill in the House and Senate, and again upon submission of a conference report thereon—

(A) the discretionary spending limits; and

(B) the appropriate budgetary aggregates,

as set forth in H. Con. Res. 67, shall be adjusted in accordance with paragraph (3).

(2) AUTHORITY TO ADJUST COMMITTEE ALLOCATIONS.—For purposes of enforcement under the Congressional Budget Act of 1974 and under H. Con. Res. 67 (One Hundred Fourth Congress), at any time after the introduction of the balanced budget bill, but prior to consideration of that bill in the House or Senate, as the case may be, and again upon submission of a conference report thereon, the allocations to the Committees of the Senate and the House pursuant to sections 302 and 602 shall be adjusted in accordance with paragraph (3).

(3) ADJUSTMENTS.—The adjustments required by paragraphs (1) and (2) shall be made by the Chairman of the Committee on the Budget of the Senate or the House of Representatives (as the case may be) and shall be consistent with the budgetary impact of the balanced budget bill. The adjusted discretionary spending limits, allocations, and aggregates shall be considered the appropriate limits, allocations, and aggregates for purposes of enforcement of the Congressional Budget Act and for enforcement of provision of H. Con. Res. 67 (One Hundred Fourth Congress).

(4) REPORTING REVISED SUBALLOCATIONS.—Following the adjustments made under paragraph (3), the Committees on Appropriations of the Senate and the House of Representatives may report appropriately revised suballocations pursuant to sections 302(b) and 602(b) of this Act to carry out this subsection.

(5) TECHNICAL ADJUSTMENTS TO HOUSE ALLOCATIONS.—Upon the enactment of a balanced budget bill introduced under subsection (a), the chairmen of the Committee on the Budget of the House may make necessary technical revisions to the revised allocations made under paragraph (2).

(e) BALANCED BUDGET BILL.—As used in this section, the term ''balanced budget bill'' means any bill that achieves a balanced budget not later than fiscal year 2002, which is introduced pursuant to subsection (a).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

Mr. EMERSON. Reserving the right to object, Mr. Speaker, I yield to the gentleman from Fairfax County, VA [Mr. DAVIS].

Mr. DAVIS. Mr. Speaker, let me explain. This takes S. 1508 and ties to it an expedited procedure for consideration of a budget resolution when it is agreed to by the President and congressional leaders in the Senate that would not make it subject to filibuster, that would move that along so this country could get on with a 7-year CBO-scored balanced budget.

This would, though, allow Federal contractors to continue to work as Federal employees come back to supervise those contracts. The contractors, you talk about unintended victims, are people who have really been cut out of that process, and this would allow Federal employees to get back to do work and do all of these things mentioned.

The difficulty has been that so far there has been an objection in the Senate to this, and hopefully by passing this in this body and sending it over, perhaps the Senate can work out their differences and send it back. It is really in that spirit that we move to this.

Mr. GEPHARDT. Mr. Speaker, will the gentleman yield?

Mr. EMERSON. Mr. Speaker, under my reservation of objection, I am delighted to yield to the gentleman from Missouri, the distinguished minority leader.

Mr. GEPHARDT. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I want to explain to the body that what is being asserted here is the bill that I a moment ago tried to get up, with a very important amendment. The amendment would put into place an expedited procedure for consideration of a balanced budget bill in the Senate, in the other body. It is my understanding from the Democratic leader of the other body that they will not accept this legislation. They would accept the legislation without the expedited procedure on the balanced budget, but they will not accept this. The Members on the other side are not in town to even be consulted to see if they could accept it, so this, in effect, is a poison pill in this piece of legislation that will not allow it to go forward.

I would simply say that if the majority in this House is interested in the Federal Government going back to work, they will allow us to bring up the bill we tried to bring up a moment ago without the poison pill amendment, which will keep it from going through the Senate. If we insist on putting the poison pill in the bill, we are

going to be back here next Wednesday right where we are today, without anybody in the Federal Government who is not working today working. We are going to be paying people to stay at home, which is unconscionable and against the interests of Federal employees and the interests of taxpayers.

Mr. EMERSON. Reclaiming my time, Mr. Speaker, I yield to the gentleman from Virginia [Mr. DAVIS].

Mr. DAVIS. Mr. Speaker, I do not share the same pessimism my friend, the gentleman from Missouri, has at this point. I understand there was an objection that was interposed last evening by the Democratic side in the Senate. The poison pill the gentleman speaks about simply would allow the Senate to filibuster to death any kind of balanced budget resolution that the President and congressional leaders agree to. That seems almost indefensible to me, but at this point I think that is the best we are going to get.

I wish the gentleman's unanimous-consent request had been adopted by this body. I supported that, and will continue to support that every opportunity I get. But I think this is our next-best shot. We can send it there and hopefully the Senate will work something out that will allow a balanced budget agreement to be debated in a reasonable amount of time and not be filibustered to death, which is why I understand the objection was interposed last evening.

Mr. EMERSON. Reclaiming my time, Mr. Speaker, I yield to the gentlewoman from Maryland [Mrs. MORELLA].

Mrs. MORELLA. Mr. Speaker, I rise in support of this version. Again, Mr. Speaker, what our aim is, I think together, in a bipartisan way, we want to get our Federal Government operating again fully. We also wanted to balance the budget in 7 years. Basically, that is what we are saying, that we will not allow filibustering around the clock, ad infinitum, but set a period of time that is very reasonable to expedite the balanced budget.

I want to reiterate the fact that we have Federal employees in so many departments who are not working, who have so much to offer, who are demoralized. This shutdown is costly financially, in terms of productivity, and in terms of morale. In the EPA, the Environmental Protection Agency, by Tuesday I understand that there will not be the funding or the people power to clean the Superfund sites; NASA, Interior, the parks and museums, the State Department. So many people have been in emergency situations where they have not been able to obtain visas or passports.

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I spoke to someone internationally, a consul general, who was actually furloughed, but who went back on the job because of emergency situations.

The Small Business Administration: 250 loans per day are not being offered because of the fact that people who work for the Small Business Administration are furloughed.

The Justice Department: 250,000 home mortgages are not being produced every day because of the fact that Housing and Urban Development is not operating.

So it is time for us to move on. This may not be ideal, but it is the best we can do. It guarantees payment for Federal employees. It puts them back to work, and it says that this Congress and the administration are in favor of a balanced budget scored by CBO in 7 years. I thought that was something we already accepted.

As a matter of fact, my understanding is that President Clinton has said that he is in favor of this plan, and so I hope that we will, by unanimous consent, approve of it as a step in the right direction.

Mr. EMERSON. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Virginia [Mr. MORAN].

Mr. MORAN. Mr. Speaker, I thank my friend for yielding.

In the first place, we have a bill here at the desk that has been passed by unanimous consent in the Senate. We know if we passed that bill which we just considered, we just spoke on, S. 1508, Federal employees are put back on the job, and all of the things that the gentlewoman from Maryland [Mrs. MORELLA] said which are certainly so true, we respond in a positive, effective way to that situation.

The problem with this bill is that we have been told, and unequivocally, that the Senate will not accept this bill. There are 46 Senators, Democrats, over in the other body who will feel disenfranchised, who will feel that we are dictating to them something they will not accept, because they have to represent the interests of their constituency.

Now, the fact is that there already are specific provisions dealing with reconciliation bills that streamline the process, that limit debate on these reconciliation bills. There are already rules in place that are designed to expedite the legislation. This is not necessary. This is far more restrictive provisions than they can accept, and regardless of the merits of whether or not they should accept this, the fact remains that this will do nothing to get the job done, to get Federal employees back on the job.

Let me just suggest something to consider: If you are 20 feet from shore and you are drowning and somebody throws you a 15-foot rope, it is well-intentioned, it goes more than halfway, it is what needs to be done, you would assume, to throw a rope, but if the rope is not long enough, the rope does not get to the person who is drowning, it is no good.

That is the analogy that applies to this piece of legislation. This piece of legislation dooms Federal employees to be locked out of their job and the American public locked out of their Government until we begin all over again next week.

If the President agrees to something, then it is clear that the Democrats in the House and Senate are going to follow his lead. So it should not be a problem. There is no reason why we cannot approve the legislation we just talked about. We just got the support; every Member spoke positively who spoke about that legislation. If we do it today, Federal employees are back on the job today. We have done our work, and then we ought to be able to enjoy the holiday. Otherwise, we have no business even being on recess.

Mr. EMERSON. Mr. Speaker, further reserving the right to object, I yield to the distinguished gentleman from Virginia [Mr. WOLF].

Mr. WOLF. Mr. Speaker, let me try to bring some clarity, to this so everyone understands what we are talking about. I would have supported the other one gladly. I also support this one and hopefully people on the other side, they supported Senator DOLE's gladly, so hopefully they will then support this, this gladly.

This process of the expedited procedure is not all unusual process. It is actually in the budget rules now, so, I mean, it really is not any different except for the hourly thing.

Third, I think it is important for this reason, I serve on the Committee on Appropriations, and the Labor-HEW bill has been tied up over in the Senate for well over, I think, 5 or 6 weeks. It has been debated and moved and changed and filibustered whereby it cannot even come up.

So this process brings it up, and it is an expedited process. It is a good procedure. It gives the Senate time, the same way they would under the normal budget things.

The other thing is it gets us to a balanced budget. Both sides say they want a balanced budget. It gets us there. It gets us to a balanced budget in 7 years. It gets us to a balanced budget scored by CBO, and another thing, in a bipartisan nature, the President supports this.

I watched the news last night, and I do not know if it was the 10 o'clock news or 11 o'clock news, that focused in on the President. The President said he supported this process, he supported the expedited procedure.

Senator DOLE has been supportive of theirs, hopefully they will be supportive of this. And TOM DASCHLE, who is a good Member of the Senate, served here in the House, has a lot of Federal employees in his district, last night on one of the shows they focused in on Mount Rushmore which I believe is in his area; I believe this would be good for the body. I think it would be good for the Congress. I think it would be good for Federal employees. But perhaps more importantly than anything, this expedited procedure process in moving this along would be good for the country. That is what we are here for, to do the best interests of the country.

Had the other one been OK, fine. I even voted for it on the rollcall we did a week ago. I was one of three Republicans that did this. That process is there. This process is here. Let us pass this today so the Senate will have the opportunity, and hopefully take the opportunity, to work it and pass it whereby Federal employees can come back early next week.

Mr. EMERSON. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Virginia [Mr. DAVIS].

Mr. DAVIS. Mr. Speaker, I appreciate the frustration of Members on both sides in trying to deal with this in a fair-handed way.

Once again I supported the minority leader's request to bring this up clean. That was the surest and safest way to get Federal employees and contractors back to work.

This can work, too. The only objection that could be interjected here are by Senators who feel a balanced budget agreement agreed to by the President and congressional leaders and brought back here would not be subject to the same expedited consideration that we usually undergo in budget reconciliation, that would allow a handful of Members to filibuster to death a balanced budget.

No one here, I think, favors that. I cannot believe when it goes back to the Senate they will not be able to work that out. This is not necessarily the preferred mode. This moves us closer to the balanced budget and moves us closer to getting Federal employees back to work.

In the absence of the minority leader's request today being objected to, this is the next best option. I hope it will be adopted.

Mr. EMERSON. Mr. Speaker, further reserving the right to object, I yield very briefly to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, we have been relatively rational, reasonable sounding in the course of this day's proceedings. But I want to tell the Speaker and this House there is a great deal of anger in America, not just in my district or that of the gentleman from Virginia [Mr. DAVIS], or that of the gentleman from Virginia [Mr. WOLF], or that of the gentleman from Virginia [Mr. MORAN], or that of the gentlewoman from Maryland [Mrs. MORELLA], a great deal of anger, I suspect in yours as well, Mr. Speaker, anger that the politicians cannot get it done.

The difference between the last resolution, yes, it was offered by the minority leader, the majority leader of the U.S. Senate, a Republican running for President, and, yes, President Clinton agreed with it as the gentleman from Virginia [Mr. WOLF] has pointed out, and our side agreed with it in a bipartisan, nonpartisan, common sense, let us get the Government back to work and stop playing politics with one another.

There is a difference with this resolution. This resolution attempts to muzzle the minority in the Senate.

Now, Mr. Speaker, I am not going to object to this resolution. My friend, the gentleman from Virginia [Mr. DAVIS], points out that this is the next best thing. I suggest the best thing is to pass a simple continuing resolution which could have been done in 5 minutes before we left here to go on recess ourselves.

Mr. Speaker, I fear very much that the analogy made by the gentleman from Virginia [Mr. MORAN] that this is a 15-foot rope for a 20-foot victim may be apt. It may be correct. And that is a tragedy, and those in America who are angry are angry because they see this as politics as usual, not doing what everybody on this floor has said ought to be done, everybody today has said ought to be done, put the Government back to work while we make the difficult decisions.

But I think the inevitable decision is to get us to balance. I am for that. As everybody knows, I voted for that.

Mr. Speaker, I would hope that in the next few hours, the leadership, who, as the gentleman from Missouri, a decent, honest Member who serves his district and country well, said of the objection on the last amendment, that it was for certain procedural amenities. I appreciate that. That is important to us on the minority side that we cannot offer a unanimous-consent request if they do not agree, and they cannot offer if we do not agree. That is an important principle. I understand that.

But when Americans hear that the Government is shut down because of certain procedural amenities, very frankly, their anger is heightened.

I do not mean to mischaracterize what the gentleman said. The gentleman referred to what both sides feel is an important consideration that each gives to the other. I want to make that clear to the American public. The gentleman honestly and correctly stated that principle.

But, Mr. Speaker, we should in a very simple, straightforward way, with no political objections on either side, pass Majority Leader DOLE's resolution clean. Let that be the law, and then let us resolve the difference between us and adopt what I believe that more than two-thirds of this body and, frankly, more than two-thirds of the Senate agree ought to be done, that is, a balanced budget in 7 years honestly scored by CBO so that America and America's children could have a better future.

Mr. EMERSON. Mr. Speaker, further reserving the right to object, if no one else seeks recognition, let me say that the resolution that was objected to would have permitted a minority of a minority of a minority in the Senate to filibuster interminably. The issue now before the House, the resolution now before the House, would put the issue right on the dime and get on with business.

Mr. Speaker, in consideration of the superior nature of this resolution, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. SCHIFF). Is there objection to the request of the gentleman from Virginia?

There was no objection.

The Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

BILLS AND JOINT RESOLUTIONS PRESENTED TO THE PRESIDENT

Mr. THOMAS, from the Committee on House Oversight, reported that that committee did on this day present to the President, for his approval, bills and joint resolutions of the House of the following titles:

H.J. Res. 136. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

H.R. 1530. An act to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

H.R. 1655. To authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

RECESS

The SPEAKER pro tempore. Pursuant to section 3 of House Resolution 320, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 10 o'clock and 58 minutes a.m.), the House stood in recess subject to the call of the Chair.

NOTICE OF ADOPTED RULES

U.S. CONGRESS,
OFFICE OF COMPLIANCE,
Washington, DC, December 21, 1995.

Hon. NEWT GINGRICH,
Speaker of the House, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to Section 303 of the Congressional Accountability Act of 1995 (2 U.S.C. §1384(b)), I am transmitting the enclosed Notice of Adoption of Procedural Rules, together with a copy of the rules for publication in the Congressional Record.

In addition, I have enclosed for publication, along with the adopted rules, a ''redlined'' copy of the proposed rules, which were published in the Congressional Record on November 14, 1995. Publication of this ''redlined'' copy, along with the final rules, will enable readers of the Congressional Record to note precisely the changes that were made.

The Congressional Accountability Act specifies that the enclosed rules be published on the first day on which both Houses are in session following this transmittal.

Sincerely,

RICKY SILBERMAN,
Executive Director.

[Below are the adopted rules, with changes from the proposed rules indicated as follows: new or altered material appears in boldface; deleted material is bracketed in boldface.]

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: PROCEDURAL RULES

NOTICE OF ADOPTION OF PROCEDURAL RULES

Summary: Section 303 of the Congressional Accountability Act directs the Executive Director of the Office of Compliance to adopt rules governing the procedures of the office. After considering comments to the Notice of Proposed Rulemaking published November 14, 1995 in the Congressional Record, the Executive Director has adopted and is publishing rules to govern the procedures for consideration and resolution of alleged violations of the laws made applicable under Part A of Title II of the Congressional Accountability Act (P.L. 104–1). Pursuant to Section 303(a) the rules have been approved by the Board of Directors, Office of Compliance.

For Further Information Contact: Executive Director, Office of Compliance, Room LA–200, 110 Second Street, S.E., Washington, DC 20540–1999. Telephone (202) 252–3100.

Background and Summary: The Congressional Accountability Act of 1995 (''CAA''), PL 104–1, was enacted into law on January 23, 1995. 2 U.S.C. §1301 et. seq. In general, the CAA applies the rights and protections of eleven federal labor and employment law statutes to covered employees and employing offices within the legislative branch. Section 301 of the CAA establishes the Office of Compliance as an independent office within that branch. Section 303 of the CAA directs that the Executive Director, the chief operating officer of the Office of Compliance, shall, subject to the approval of the Board, adopt rules governing the procedures for the Office of Compliance, including the procedures of Hearing Officers. The rules that follow establish the procedures by which the Office of Compliance will provide for the consideration and resolution of alleged violations of the laws made applicable under Part A of Title II of the CAA. The rules include procedures for counseling, mediation, and for electing between filing a complaint with the Office of Compliance and filing a civil action in a district court of the United States. The rules also address the procedures for the conduct of hearings held as a result of the filing of a complaint and for appeals to the Board of Directors of the Office of Compliance from Hearing Officer decisions, as well as other matters of general applicability to the dispute resolution process and to the operations of the Office of Compliance.

To obtain input from interested persons on the content of these rules the Executive Director published for comment a Notice of Proposed Rulemaking in the Congressional Record on November 14, 1995 (141 Cong. R. S17012 (daily ed., November 14, 1995) (''NPR'')), inviting comments regarding the proposed rules. Seven comments were received in response to the proposed rules. Comments were received from Members of Congress, employing offices and a management employee of the Architect of the Capitol expressing his personal view. After full consideration of the comments received, the Executive Director has, with the approval of the Board, adopted these procedural rules.

Summary and Board's Consideration of Comments

Confidentiality and Sanctions

Summary of Comments

Several commenters questioned whether the CAA empowers the Board, Hearing Officers, or the Office to impose sanctions for breaches of confidentiality. They also stated that, assuming sanctions can be imposed, the rules should provide more details as to what conduct may be sanctioned, what the sanctions will be, and how those sanctions will be imposed. One commenter noted that identifying possible sanctions will help forestall any due process challenges in the context of breaches of confidentiality.

Response

Section 1.07 sets forth the standard for imposing sanctions against individuals or employing offices that violate the confidentiality provisions of section 416 of the CAA. The form and procedures governing the imposition of sanctions are modeled after Rule 37(b) of the Federal Rules of Civil Procedure.

Section 1.07 makes clear that the confidentiality provisions prohibit any disclosure of information discussed or exchanged in the course of counseling under Section 402, mediation under Section 403 and Board hearings and deliberations under Sections 405 and 406 of the CAA. Section 1.07 of the rules only prohibits the use of information (including documents) which was obtained by the individual during the counseling, mediation or other proceedings. However, employees, employing offices and individuals that participate in counseling, mediation or other confidential proceedings are not prohibited by these rules from discussing or disclosing information that was obtained by that person outside the confidential proceedings. The Board believes that a confidentiality rule of this breadth appropriately balances the statutory mandates for confidentiality and the statutory mandate to have open and effective counseling, mediation, hearings and Board proceedings. Finally, this section makes clear that communications necessary for the pursuit or defense of claims under the CAA (communications with lawyers or other representatives) are not prohibited, even if such communications involve disclosure of the contents of confidential proceedings. The Board believes that these provisions adequately address the concerns expressed by some commenters that the confidentiality provisions not unduly limit the ability of employees and employing offices to engage in communications which the law should encourage and not discourage parties from utilizing the procedures of the CAA.

It is the intent of the Board that Section 1.07 and the confidentiality provisions apply to non-party participants such as witnesses and representatives. Such persons have voluntarily submitted to the jurisdiction of the Office of Compliance by participating in the proceedings, or are subject to the Office's jurisdiction by virtue of the subpoena power. Section 1.07 is part of the general authority of the Office of Compliance to set the rules and procedures of the Office, including the procedures of hearing officers, under Section 303(a) of the CAA. Section 1.07 is reasonably necessary to preserve the confidentiality of counseling, mediation and Board proceedings mandated by section 416 of the CAA.

Section 1.07 does not authorize sanctions against personnel of the Office of Compliance, as suggested by a commenter. Although the Board agrees that the confidentiality provisions apply to personnel of the Office of Compliance, the Board believes that violations by Office personnel can be adequately addressed as a disciplinary matter within the Office, not under Section 1.07.

Filings by Facsimile Transmission (FAX)

Summary of Comments

On the filing of documents by FAX, two commenters suggested that Sections 1.03 and 2.03 of the proposed rules should clearly state that a request for counseling can be filed by FAX. One commenter stated that the rules should allow ''all documents'' to be filed by FAX. Another commenter suggested that the rules expressly provide that, in order to expedite the pre-hearing and hearing processes, documents may be filed with a Hearing Office by FAX.

Response

The language of Section 1.03(a) has been clarified to expressly provide that a formal request for counseling may be filed by FAX and a provision has been added to allow the Board or a Hearing Officer, in their discretion, to order documents to be filed by FAX. Generally, allowing all documents to be filed by FAX might impose undue burdens on the receivers of FAX submissions and interfere with the Office of Compliance's orderly handling of documents. Accordingly, the proposed rule has not been modified to allow for such filing.

Withdrawals of Requests for Counseling

Summary of Comments

Several commenters suggested that Section 2.03(k) of the proposed rules should limit an employee's right to reinstate counseling to situations in which the request for reinstatement of counseling is made within the 180-day period established by Section 402 of the CAA. One commenter also expressed concern about the prospect of covered employees extending their claims indefinitely by repeatedly withdrawing from counseling and then reinstating the counseling request until the 30-day limit is reached. Another commenter indicated that the 30-day statutory limit on the counseling period requires the 30 days to be consecutive with no hiatus.

Response

The revised rule permits a covered employees, who has begun counseling, to withdraw from counseling with a single opportunity to reinstate counseling so long as the reinstatement request occurs within 180 days after the alleged violation and the counseling period does not exceed a total of 30 days. This addresses the commenters' concerns regarding the timeliness of counseling and the possibility of extended processing of claims. Because the Board is of the view that allowing an aggregate of 30 days of counseling conducted during two separate time frames is permissible under the CAA, the proposed rule has not been further modified.

Grievance Procedures of the Architect of the Capitol or the Capitol Police

Summary of Comments

Commenters asked for clarification in Section 2.03(m) of the term ''grievance procedures of the Architect of the Capitol or the Capitol Police'' under Section 401 of the CAA. One commenter suggested that Section 2.03(m) also provide for the Executive Director to recommend to any covered employees that they use grievance procedures which may be instituted in the further in any other employing offices.

Response

The adopted and approved rule defines the term ''grievance procedures'' to include any internal procedure of the Architect of the Capitol or the Capitol Police that is capable of resolving the issue about which the employee of the Architect of the Capitol or the Capitol Police has sought counseling.

Section 2.03(m) of the proposed rules exists by virtue of Section 401 of the CAA and reflects the statutory authorization to toll the statutory counseling and mediation periods if an employee of the Architect of the Capitol or the Capitol Police accepts the recommendation of the Executive Director. The CAA expressly authorizes such tolling of the statutory time periods only with regard to an employee of the Architect of the Capitol or the Capitol Police, and does not permit tolling in other circumstances.

Discoverable Information

Summary of Comments

One commenter stated that Section 6.01 should not limit discovery to ''relevant'' information. Instead, the commenter suggested that, consistent with Rule 26(b)(1) of the Federal Rules of Civil Procedure, a hearing officer should allow discovery of any information ''reasonably calculated to lead to the discovery of admissible evidence.'' Another commenter requested that the rules specifically provide for discovery of requests for counseling and requests for mediation.

Response

The comments have been considered and that rule that has been adopted reflects the discovery standard of Rule 26(b)(1) of the Federal Rules of Civil Procedure. The rule does not, however, provide for the discovery of requests for counseling or mediation because that change in the rule is not necessary and could chill employees in their resort to counseling and mediation and hamper the effectiveness of those processes. To the extent that the commenter believes discovery is necessary to determine whether the applicable statutory requirements for filing a complaint have been met, the Office intends to include sufficient information in the notice of the end of the mediation period to allow such a determination by the employing office to be made.

Disqualification of Hearing Officers

Summary

Two commenters stated that Section 7.03 should provide that the denial of a motion to disqualify a Hearing Officer may be appealed directly to the Board, without review by the Executive Director.

Response

The Board has approved a rule that eliminates the requirement that the Executive Director review motions to disqualify a Hearing Officer and provides for Board review of the denial of a motion to disqualify during the appeal to the Board, if any, of the Hearing Officer's decision on the merits.

Admissibility of Evidence

Summary of Comments

Two commenters suggested that the procedural rules should not require a Hearing Officer to apply the Federal Rules of Evidence. One commenter was concerned that the reliance on the Federal Rules of Evidence would require a covered employee to retain an attorney. Another commenter stated that the rules should merely state that the Hearing Officer shall apply the provisions of the Administrative Procedure Act (Sec. 554 through 557 of the Title 5, U.S. Code) (APA), specifically Sec. 556(d) of Title 5, in hearing a case because Section 405(d)(3) of the CAA instructs that the hearing shall be conducted, ''to the greatest extent practicable, in accordance with the principles and procedures'' of those sections of the APA. This commenter asserts that the Federal Rules of Evidence set a ''more restrictive'' standard than that found in the APA and may limit the development of the hearing record.

Response

Section 7.09 of the rules has not been modified. The Federal Rules of Evidence clarify and more fully develop the APA provisions regarding evidentiary rulings. They are complementary, not contradictory, to the APA. In addition, the procedural rules require that the Federal Rules of Evidence be applied ''to the greatest extent practicable.'' Accordingly, a Hearing Officer, in his or her discretion, may adapt, or depart from, these rules as warranted. Moreover, as the Federal Rules of Evidence are applicable in the federal courts, the adopted rule provides the collateral benefits of affording some uniformity between the administrative hearing process of the Office of Compliance and civil actions filed in the district courts under Section 408 of the CAA.

Informal Resolution of Disputes

Summary of Comments

Three comments were received with respect to Section 9.03(b) of the proposed rules. Two commenters questioned whether the informal resolution of disputes is permitted under the CAA in light of the requirements of Section 414. Another commenter stated that the proposed rule should be revised because resolution of disputes cannot exist without a mandatory waiver of a covered employee's rights or the commitment by the employing office to an enforceable obligation.

Response

Section 9.03 of the rules has been reorganized to clarify its intent and meaning. Before a complaint is filed, an employee and an employing office may agree upon a mutually satisfactory arrangement, thereby resolving the dispute without a waiver by the employee or a commitment by the employing office to an enforceable obligation. The Board has considered the comments but is not persuaded that all early, mutually satisfactory resolutions of disputes between parties must be reduced to writing and approved by the Executive Director under Section 414 of the CAA. Section 9.03 of the rules recognizes that the policy underlying the CAA favors the early resolution of disputes and permits a covered employee for whom counseling and mediation has been successful to withdraw from the dispute resolution process without the requirement that such resolution be reduced to writing and submitted to the Executive Director for approval.

Attorney's Fees and Costs

Summary of Comments

One commenter suggested that Section 9.03(a) of the proposed rules be modified to prevent requests for attorney's fees during the pendency of an appeal of the Hearing Officer's decision. In this commenter's view, such requests would be ''premature'' because the Board could reverse a Hearing Officer's decision in the complainant's favor, making an award of fees inappropriate.

Response

The Board has considered this comment in the context of the applicable provisions of the CAA. Under Section 225(a), if a covered employee is a ''prevailing party,'' the Hearing Officer, Board, or court, as the case may be, may award attorney's fees, expert fees, and any other costs as would be appropriate if awarded under section 717(d) of the Civil Rights Act of 1964. Similarly, Section 405(g) provides that the Hearing Officer shall order, at the time of the final decision, such remedies as are appropriate pursuant to title II'' of the CAA, which includes attorney's fees, if appropriate. These statutory sections contemplate that the Hearing Officer would make an attorney's fee award, if appropriate, without awaiting a decision disposing of the case on appeal.

In actions involving private sector parties, an award of attorney's fees and costs is not delayed ordinarily by an appeal of the decision on the merits. See generally Fed. R. Civ. P., 58, Fed R. App. Proc., 4(a)(4). The Board has considered the comment and does not find any compelling reason to delay the Hearing Officer's decision on fees and costs simply because the decision on the merits is pending an appeal. Therefore, Section 9.01 of the procedural rules has not been modified.

Class Actions

Summary of Comments

One commenter questioned whether the proposed rules were intended to prohibit class actions and requested that the rules specifically set forth procedures governing class actions.

Response

The procedural rules that have been adopted do not purport to address whether and in what circumstances, if any, employees may pursue class claims. The issue is one that involves substantive legal questions that are not appropriately addressed in these procedural rules.

Additional Comments

Commenters suggested various technical and ministerial changes in the proposed rules which improved their clarity and effectiveness and were consistent with the policy underlying the particular provisions. Those changes have been made and are included in the published rules, which are ''red-lined'' to indicate all changes made.

Several other suggestions, such as what information the Office will include in certain notifications and how it will handle telephonic requests for counseling, will be and are best handled as part of the Office's internal operational process rather than codified in the procedural rules. Similarly, requests that the Senate Chief Counsel for Employment or the House Office of General Counsel receive certain notifications during the dispute-resolution process are best handled by House and Senate internal procedures rather than in the Office's procedural rules, particularly because the confidentiality provisions of the CAA preclude the Office from disclosing the existence of a particular proceeding to individuals other than the parties or their designated representatives. However, to the extent that the commenters sought such notification in order to file an amicus curiae brief, it should be noted that the Board may, in certain cases, solicit such briefs. In those cases the Board will employ appropriate safeguards to ensure that the identity of the participants in any proceeding is not disclosed.

Finally, commenters suggested other additions or modifications to the procedural rules such as not allowing additional time for filings when documents are served by mail, permitting more time for the filing of responses, the imposition of more formal and detailed discovery procedures, the holding of pre-hearing conference at a later date than that proposed, a requirement that parties file pre-hearing memoranda and limitations on a party's ability to object to testimony or the calling of a witness. The Board is of the view that the Office's procedures should be neither cumbersome nor onerous for the parties who wish to participate in the CAA's administrative dispute resolution process and that the short time frames under the CAA, particularly the 60-day period between complaint and hearing, should be fully available for the preparation and processing of claims. It is the Board's considered judgment that to incorporate the foregoing or similar suggestions in the procedural rules would have the undesired effect of discouraging the use of the administrative process and, thereby, encouraging the use of the federal civil process.

PART 1—OFFICE OF COMPLIANCE

OFFICE OF COMPLIANCE RULES OF PROCEDURE

Subpart A—General Provisions

§1.01 Scope and policy

These rules of the Office of Compliance govern the procedures for consideration and

resolution of alleged violations of the laws made applicable under Part A of title II of the Congressional Accountability Act of 1995. The rules include procedures for counseling, mediation, and for electing between filing a complaint with the Office of Compliance and filing a civil action in a district court of the United States. The rules also address the procedures for the conduct of hearings held as a result of the filing of a complaint and for appeals to the Board of Directors of the Office of Compliance from Hearing Officer decisions, as well as other matters of general applicability to the dispute resolution process and to the operations of the Office of Compliance. It is the policy of the Office that these rules shall be applied with due regard to the rights of all parties and in a manner that expedites the resolution of disputes.

§1.02 Definitions

Except as otherwise specifically provided in these rules, for purposes of this Part;

(a) Act. The term ''Act'' means the Congressional Accountability Act of 1995;

(b) Covered Employee. The term ''covered employee'' means any employee of

(1) the House of Representatives;

(2) the Senate;

(3) The Capitol Guide Service;

(4) the Capitol Police;

(5) the Congressional Budget Office;

(6) the Office of the Architect of the Capitol;

(7) the Office of the Attending Physician;

(8) the Office of Compliance; or

(9) the Office of Technology Assessment.

(c) Employee. The term ''employee'' includes an applicant for employment and a former employee.

(d) Employee of the Office of the Architect of the Capitol. The term ''employee of the Office of the Architect of the Capitol'' includes any employee of the Office of the Architect of the Capitol, the Botanic Garden or the Senate Restaurants.

(e) Employee of the Capitol Police. The term ''employee of the Capitol Police'' includes civilian employees and any member or officer of the Capitol Police.

(f) Employee of the House of Representatives. The term ''employee of the House of Representatives'' includes an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (9) of paragraph (b) above.

(g) Employee of the Senate. The term ''employee of the Senate'' includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (9) of paragraph (b) above.

(h) Employing Office. The term ''employing office'' means:

(1) the personal office of a Member of the House of Representatives or a Senator;

(2) a committee of the House of Representatives or the Senate or a joint committee;

(3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(4) the Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

(i) Party. The term ''party'' means the employee or the employing office.

(j) Office. The term ''Office'' means the Office of Compliance.

(k) Board. The term ''Board'' means the Board of Directors of the Office of Compliance.

(l) Chair. The term ''Chair'' means the Chair of the Board of Directors of the Office of Compliance.

(m) Executive Director. The term ''Executive Director'' means the Executive Director of the Office of Compliance.

(n) General Counsel. The term ''General Counsel'' means the General Counsel of the Office of Compliance.

(o) Hearing Officer. The term ''Hearing Officer'' means any individual designated by the Executive Director to preside over a hearing conducted on matters within the Office's jurisdiction.

§1.03 Filing and Computation Time

(a) Method of Filing. Documents may be filed in person or by mail, including express, overnight and other expedited delivery. **Requests for counseling under Section 2.03,** requests for mediation under Section 2.04 and complaints under Section 2.06 of these rules may also be filed by facsimile (FAX) transmission. **In addition, the Board or a Hearing Officer may order other documents to be filed by FAX.** The original copies of documents filed by FAX must also be mailed to the Office no later than the day following FAX transmission. The filing of all documents is subject to the limitations set forth below.

(1) In Person. A document shall be deemed timely filed if it is hand delivered to the Office in: Adams Building, Room LA 200, 110 Second Street, SE., Washington, DC, 20540–1999, before **5:00 p.m. Eastern Time on the last day of** [the expiration of] the applicable time period.

(2) Mailing. (i) If mailed, **including express, overnight and other expedited delivery,** a request for mediation or a complaint is deemed filed on the date of its receipt in the Office [of Compliance]. (ii) A document, other than a request for mediation or a complaint, is deemed filed on the date of its postmark or proof of mailing **to the Office.** Parties, including those using franked mail, are responsible for ensuring that any mailed document bears a postmark date or other proof of the actual date of mailing. In the absence of a legible postmark a document will be deemed timely if it is received by the Office at Adams Building, Room LA 200, 110 Second Street, S.E., Washington, D.C. 20540–1999, by mail within five (5) days of the expiration of the applicable filing period.

(3) Faxing documents. Documents transmitted by FAX machine will be deemed filed on the date received at the Office at 202–252–3115. A FAX filing will be timely only if the Office receives the document no later than 5:00 PM Eastern Time on the last day of the applicable filing period. Any party using a FAX machine to file a document bears the responsibility for ensuring both that the document is timely and accurately transmitted and confirming that the Office has received a facsimile of the document. The party or individual filing the document may rely on its FAX status report sheet to show that it filed the document in a timely manner, provided that the status report indicates the date of the FAX, the receiver's FAX number, the number of pages included in the FAX, and that transmission was completed.

(b) Computation of Time. All time periods in these rules that are stated in terms of days are calendar days unless otherwise noted. However, when the period of time prescribed is five (5) days or less, intermediate Saturdays, Sundays and Federal government holidays shall be excluded in the computation. To compute the number of days for taking any action required or permitted under these rules, the first day shall be the day after the event from which the time period begins to run and the last day for filing or service shall be included in the computation. When the last day falls on a Saturday, Sunday, or federal government holiday, the last day for taking the action shall be the next regular federal government workday.

(c) Time Allowances for Mailing of Official Notices. Whenever a person or party has the right or is required to do some act within a prescribed period after the service of a notice or other document upon him or her and the notice or document is served by regular, **first-class** mail, five (5) days shall be added to the prescribed period. Only two (2) days shall be added if a document is served by express mail or other form of expedited delivery. When documents are served by certified mail, return receipt requested, the prescribed period shall be calculated from the date of receipt as evidenced by the return receipt.

§ 1.04 Availability of Official Information

(a) Policy. It is the policy of the Board, the Office and the General Counsel, except as otherwise ordered by the Board, to make available for public inspection and copying final decisions and orders of the Board and the Office, as specified and described in paragraph (d) below.

(b) Availability. Any person may examine and copy items described in paragraph (a) above at the Office of Compliance, Adams Building, Room LA200, 110 Second Street, S.E., Washington, D.C. 20540–1999, under conditions prescribed by the Office, including requiring payment for copying costs, and at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Office. As ordered by the Board, **the Office may withhold or place under seal** identifying details or other necessary matters **[**may be deleted and placed under seal**]** and, in each case, the reason for the **withholding or sealing [**deletion**]** shall be stated in writing.

(c) Copies of forms. Copies of blank forms prescribed by the Office for the filing of complaints and other actions or requests may be obtained from the Office.

(d) Final decisions. Pursuant to Section 416(f) of the Act, a final decision entered by a Hearing Officer or by the Board under Section 405(g) or 406(e) of the Act, which is in favor of the complaining covered employee or reverses a Hearing Officer's decision in favor of a complaining covered employee, shall be made public, except as otherwise ordered by the Board.

(e) Release of records for judicial action. The records of Hearing officers and the Board may be made public if required for the purpose of judicial review under Section 407 of the Act.

(f) Access by Committees of Congress. At the discretion of the Executive Director, the Executive Director may provide to the Committee on Standards of Official Conduct of the House of Representatives and the Select Committee on Ethics of the Senate access to the records of the hearings and decisions of the Hearing Officers and the Board, including all written and oral testimony in the possession of the Office. The identifying information in these records may be redacted at the discretion of the Executive Director. The Executive Director shall not provide such access until the Executive Director has consulted with the individual filing the complaint at issue, and until a final decision has been entered under Section 405(g) or 406(e) of the Act.

§ 1.05 Designation of Representative

(a) An employee, a witness, or an employing office wishing to be represented by another individual must file with the Office a written notice of designation of representative. The representative may be, but is not required to be, an attorney.

(b) Service where there is a representative. All service of documents shall be directed to the representative, unless the represented individual or employing office specifies otherwise and until such time as that individual or employing office notifies the Executive Director of an amendment or revocation of the designation of representative. Where a designation of representative is in effect, all time limitations for receipt of materials by the represented individual shall be computed in the same manner as for unrepresented individuals with service of the documents, however, directed to the representative, as provided.

§ 1.06 Maintenance of Confidentiality

(a) Policy. In accord with Section 416 of the Act, it is the policy of the Office to maintain, to the fullest extent possible, the confidentiality of the proceedings and of the participants in proceedings conducted under Sections 402, 403, 405 and 406 of the Act and these rules.

(b) At the time that any individual, employing office or party, including a designated representative, becomes a participant in counseling under Section 402, mediation under Section 403, the complaint and hearing process under Section 405, or an appeal to the Board under Section 406 of the Act, or any related proceeding, the Office will advise the participant of the confidentiality requirements of Section 416 of the Act and these rules and that sanctions **may** [might] be imposed for a violation of those requirements.

§ 1.07 Breach of confidentiality Provisions

(a) In General. Section 416(a) of the CAA provides that counseling under section 402 shall be strictly confidential, except that the Office and a covered employee may agree to notify the employing office of the allegations. Section 416(b) provides that all mediation shall be strictly confidential. Section 416(c) provides that all proceedings and deliberations of hearing officers and the Board, including any related records shall be confidential, except for release of records necessary for judicial actions, access by certain committees of Congress, and publication of final certain final decisions. See also Sections 1.06 and 2.10 of these rules.

(b) Prohibition. Unless specifically authorized by the provisions of the CAA or by order of the Board, the Hearing Officer or a court, or by the procedural rules of the Office, no participant in counseling, mediation or other proceedings made confidential under section 461 of the CAA ("confidential proceedings") may disclose the contents or records of those proceedings to any person or entity.

(c) Participant. For the purposes of this rule, participant means any individual, employing office or party, including a designated representative, that becomes a participant in counseling under Section 402, mediation under Section 403, the complaint and hearing process under Section 405, or an appeal to the Board under Section 406 of the Act, or any related proceeding which is expressly or by necessity deemed confidential under the Act or these rules.

(d) Contents or records of confidential proceedings. For the purpose of this rule, the contents or records of counseling, mediation or other proceeding includes the information disclosed by participants to the proceedings, and records disclosed by either the opposing party, witnesses or the Office. Notwithstanding these rules, a participant is free to disclose facts and other information obtained from any source outside of the confidential proceedings. For example, information forming the basis for the allegation of a complaining employee may be disclosed by that employee, provided that the information contained in those allegations was not obtained in a confidential proceeding. However, the employing office or representatives other than the complaining party's representative (or, in some cases, the Office) may not disclose that information. Nothing in these rules prohibit a bona fide representative of a party under Section 1.05 from engaging in communications with that party for the purpose of participation in the proceedings, provided that such disclosure is not made in the presence of individuals not reasonably necessary to the representative's representation of that party.

(e) Violation of confidentiality. Any complaint regarding a violation of the confidentiality provisions must be made to the Executive Director no later than 30 days after the date of the alleged violation. Such complaints may be referred by the Executive Director to a Hearing Officer. The Hearing Officer is also authorized to initiate proceedings on his or her own initiative, or at the direction of the Board, if the alleged violation occurred in the context of Board proceedings. Upon a finding of a violation of the confidentiality provisions, the Hearing Officer, after notice and hearing, may impose an appropriate sanction, which may include any of the sanctions listed in section 7.02 of these rules, as well as any of the following:

(i) An order that the matters regarding which the violation occurred or any other designated facts shall be taken to be established against the violating party for the purposes of the action in accordance with the claim of the other party;

(ii) An order refusing to allow the violating party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing with or without prejudice the action or proceedings or any part thereof, or rending a judgment by default against the violating party;

(iv) In lieu of any of the foregoing orders or in addition thereto, the Hearing Officer shall require the party violating the confidentiality provisions or the representative advising him, or both, to pay, at such time as ordered by the Hearing Officer, the reasonable expenses, including attorney fees, caused by the violation, unless the Hearing Officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. Such an order shall be subject to review on appeal of the final decision of the Hearing Officer under section 406 of the Act.

No sanctions may be imposed under this section except for good cause and the particulars of which must be stated in the sanction order.

Subpart B—Procedures Applicable to Consideration of Alleged Violations of Part A of Title II of the Congressional Accountability Act of 1955

§2.01 Matters Covered by Subpart B

(a) These rules govern the processing of any allegation that Sections 201 through 206 of the Act have been violated and any allegation of intimidation or reprisal prohibited under Section 207 of the Act. Sections 201 through 206 apply to covered employees and employing offices certain rights and protections of the following laws:

(1) The Fair Labor Standards Act of 1938

(2) Title VII of the Civil Rights Act of 1964

(3) **Title I of** the Americans with Disabilities Act of 1990

(4) The Age Discrimination in Employment Act of 1967

(5) The Family and Medical Leave Act of 1993

(6) The Employee Polygraph Protection Act of 1988

(7) The Worker Adjustment and Retraining Notification Act

(8) The Rehabilitation Act of 1973

(9) Chapter 43 (relating to veterans' employment and reemployment) of title 38, United States Code.

(b) This subpart applies to the covered employees and employing offices as defined in Section 1.02 (b) and (h) of these rules and any activities within the coverage of **Sections 201 through 206 and 207 of the Act and referenced above** [The laws referred to] in Section 2.01(a) of these rules.

§2.02 Requests for advice and information

At any time, an employee or an employing office may seek from the Office of informal advice and information on the procedures of the Office and under the Act and information on the protections, rights and responsibilities under the Act and these rules. The Office will maintain the confidentiality of requests for such advice or information.

§2.03 Counseling

(a) Initiating a proceeding; formal request for counseling. In order to initiate a proceeding under these rules, an employee [who believes that he or she is covered by the Act] shall formally request counseling from the Office regarding an alleged violation of the Act, as referred to in Section 2.01(a), above. All formal requests for counseling shall be confidential, unless the employee agrees to waive his or her right to confidentiality under Section 2.03(e)(2), below.

(b) Who may request counseling. A covered employee who believes that he or she has been or is the subject of a violation of the Act as referred to in Section 2.01(a) may formally request counseling.

(c) When, how and where to request counseling. A formal request for counseling:

(1) Shall be made not later than 180 days after the date of the alleged violation of the Act;

(2) May be made to the Office in person, by telephone, or by written request;

(3) Shall be directed to: Office of Compliance, Adams Building, Room LA 200, 110 Second Street, S.E., Washington, D.C. 20540–1999; telephone: (202) 252–3100; FAX (202) 252–3115; TDD (202) 426–1912.

(d) Purpose of counseling period. The purpose of the counseling period shall be: to discuss the employee's concerns and elicit information regarding the matter(s) which the employee believes constitute a violation(s) of the Act; to advise the employee of his or her rights and responsibilities under the Act and the procedures of the Office under these rules; to evaluate the matter; and to assist the employee in achieving an early resolution of the matter, if possible.

(e) Confidentiality and waiver. (1) Absent a waiver under paragraph 2, below, all counseling shall be strictly confidential. Nothing in

these rules shall prevent a counselor from consulting with personnel with the Office concerning a matter in counseling, except that, when the person being counseled is an employee of the Office, the counselor shall not consult with any individual within the Office who might be a party or witness without the consent of the person requesting counseling. Nothing contained in these rules shall prevent the Executive Director from reporting statistical information to the Senate and House of Representatives, so long as that statistical information does not reveal the identify of the employees involved or of employing offices that are the subject of a request for counseling.

(2) The employee and **the** Office may agree to waive confidentiality of the counseling process for the limited purpose of contacting the employing office to obtain information to be used in counseling the employee or to attempt a resolution of any disputed matter(s). Such a limited waiver must be written on the form supplied by the Office and signed by both the counselor and the employee.

(f) Role of Counselor in informing employee of his or her rights and responsibilities. The counselor will provide the employee with appropriate information concerning rights and responsibilities under the Act and these rules.

(g) Role of Counselor in defining concerns. The counselor may:

(1) obtain the name, home and office mailing addresses, and home and office telephone numbers of the person being counseled;

(2) obtain the name and title of the person(s) whom the employee claims has engaged in a violation of the Act and the employing office in which this person(s) works;

(3) obtain a detailed description of the action(s) at issue, including all relevant dates, and the covered employee's reason(s) for believing that a violation may have occurred;

(4) inquire as to the relief sought by the covered employee;

(5) obtain the name, address and telephone number of the employee's representative, if any, and whether the representative is an attorney.

(h) Role of Counselor in attempting informal resolution. In order to attempt to resolve the matter brought to the attention of the counselor, the counselor must obtain a wavier of confidentiality pursuant to Section 2.03(e)(2) of this chapter. If the employee executes such a waiver, the counselor may:

(1) conduct a limited inquiry for the purpose of obtaining any information necessary to attempt an informal resolution or formal settlement;

(2) reduce to writing any formal settlement achieved and secure the signatures of the employee, his or her representative, if any, and a member of the employing office who is authorized to enter into a settlement on the employing office's behalf; and, pursuant to Section 414 of the Act and Section 9.03 of these rules, seek the approval of the Executive Director. **Nothing in this subsection, however, precludes the employee, the employing office or their representatives from reducing to writing any formal settlement.**

(i) Counselor not a representative. The counselor shall inform the person being counseled that the counselor does not represent either the employing office or the employee. The counselor provides information and may act as a third-party intermediary with the goals of increasing the individual's understanding of his or her rights and responsibilities under the Act and of promoting the early resolution of the matter.

(j) Duration of counseling period. The period for counseling shall be 30 days, beginning on the date that the request for counseling is received by the Office unless the employee and the Office agree to reduce the period.

(k) Duty to proceed. An employee who initiates a proceeding under this part shall be responsible at all times for proceeding, regardless of whether he or she has designated a representative. An employee, however, may withdraw from counseling **once** [at any time] without prejudice to the employee's right to reinstate counseling regarding the same matter, provided that **the request to reinstate counseling is received in the Office not later than 180 days after the date of the alleged violation of the Act and that** counseling on a single matter will not last longer than a total of 30 days.

(l) Conclusion of the counseling period and notice. The Executive Director shall notify the employee in writing of the end of the counseling period, by certified mail, return receipt requested. The Executive Director, as part of the notification of the end of the counseling period, shall inform the employee of the right **and obligation, should the employee choose to pursue his or her claim,** to file with the Office a request for mediation within 15 days after receipt by the employee of the notice of the end of the counseling period.

(m) Employees of the Office of the Architect of the Capitol and Capitol Police.

(1) Where an employee of the Office of the Architect of the Capitol or of the Capitol Police requests counseling under the Act and these rules, the Executive Director may recommend that the employee use the grievance procedures of the Architect of the Capitol or the Capitol Police. **The term grievance procedures refers to internal procedures of the Architect of the Capitol and the Capitol Police that can provide a resolution of the matter(s) about which counseling was requested.** Pursuant to Section 401 of the Act and by agreement with the Architect of the Capitol and the Capitol Police Board, when the Executive Director makes such a recommendation, the following procedures shall apply:

(i) The Executive Director shall recommend to the employee that the employee use the **grievance** procedures of the Architect or of the Capitol Police Board, as appropriate, for a period generally up to 90 days, unless the Executive Director determines a longer period is appropriate for resolution of the employee's complaint through the **grievance** [internal] procedures of the Architect or the Capitol Police Board;

(ii) After having contacted the Office and having utilized the grievance procedures of the Architect or to the Capitol Police Board, the employee may **notify the Office that he or she wishes to** return to the procedures under these rules:

(A) **within 10 days** after the expiration of the period recommended by the Executive Director, if the matter has not been resolved; or

(B) within 20 days after **service of** [receiving] a final decision **resulting from** [as a result of] the **grievance** procedures of the Architect or of the Capitol Police Board.

(iii) The period during which the matter is pending in the internal **grievance** procedure shall not count against the time available for counseling or mediation under the Act. If the grievance is resolved to the employee's satisfaction, **or if no request to return to the procedures under these rules is received within the applicable time period,** the Office will consider the case to be closed in its official files.

(2) Notice to employees who have not initiated counseling with the Office. When an employee of the Architect of the Capitol or the Capitol Police raises in the internal procedures of the Architect or of the Capitol Police Board an allegation which may also be raised under the procedures set forth in this subpart, the Architect or the Capitol Police Board should advise the employee in writing that a request for counseling about the allegation must be initiated with the Office within 180 days after the alleged violation of law occurred if the employee intends to use the procedures of the Office.

(3) Notice in final decisions when employees have not initiated counseling with the Office. When an employee raises in the internal procedures of the Architect or of the Capitol Police Board an allegation which may also be raised under the procedures set forth in this subpart, any final decision pursuant to the procedures of the Architect of the Capitol or of the Capitol Police Board should include notice to the employee of his or her right to initiate the procedures under these rules within 180 days after the alleged violation occurred.

(4) Notice in final decisions when there has been a recommendation by the Executive Director. When the Executive Director has made a recommendation under paragraph 1 above, the Architect or the Capitol Police Board should include notice to the employee of his or her right to resume the procedures under these rules within 20 days after service on the employee of the final decision and shall transmit a copy of the final decision, settlement agreement, or other final [decision, settlement agreement, or other final] disposition of the case to the Executive Director.

§2.04 Mediation

(a) Explanation. Mediation is a process in which employees, employing offices and their representatives, **if any,** meet separately and/or jointly with a neutral trained to assist them in resolving disputes. As parties to the mediation, employees, employing offices and their representatives [openly] discuss alternatives to continuing their dispute, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution. The neutral has no power to impose a specific resolution, and the mediation process, whether or not a resolution is reached, is strictly confidential, pursuant to Section 416 of the Act.

(b) Initiation. Not more than 15 days after receipt by the employee of the notice of the conclusion of the counseling period under Section 2.03(l), the employee may file with the Office a written request for mediation. The request for mediation shall contain the employee's name, address, and telephone number, and the name of the employing office that is the subject of the request. Failure to request mediation within the prescribed period will preclude the employee's further pursuit of his or her claim.

(c) Notice of commencement of the mediation period. The Office shall notify the employing office or its designated representative of the commencement of the mediation period.

(d) Selection of Neutrals; Disqualification. Upon receipt of the request for mediation, the Executive Director shall assign one or more neutrals to commence the mediation process. In the event that a neutral considers him or herself unable to perform in a neutral role in a given situation, he or she shall withdraw from the matter and immediately shall notify the Office of the withdrawal. Any party may ask the Office to disqualify a neutral by filing a written request, including the reasons for such request, with the Executive Director. This request shall be filed as soon as the party has reason to believe there is a basis for disqualification. The Executive Director's decision on this request shall be final and unreviewable.

(e) Duration and Extension. (l) The mediation period shall be 30 days beginning on

the date the request for mediation is received, unless the Office grants an extension.

(2) The Office may extend the mediation period upon the joint request of the parties. The request shall be written and filed with the Office no later than the last day of the mediation period. The request shall set forth the joint nature of the request and the reasons therefor, and specify when the parties expect to conclude their discussions. Requests for additional extensions may be made in the same manner. Approval of any extensions shall be within the sole discretion of the Office.

(f) Procedures. (l) The Neutral's Role. After assignment of the case, the neutral will promptly contact the parties. The neutral has the responsibility to conduct the mediation, including deciding how many meetings are necessary and who may participate in each meeting. The neutral may accept **and may ask the parties to provide** written submissions **[**from the parties**]**.

(2) The Agreement to Mediate. At the commencement of the mediation, the neutral will ask the parties to sign an agreement (''the Agreement to Mediate'') to adhere to the confidentiality of the process. The Agreement to Mediate will also provide that the parties to the mediation will not seek to have the counselor or the neural **participate**, testify or otherwise present evidence in any subsequent civil action under Section 408 of the Act or any other proceeding.

(g) Who may participate. The covered employee, the employing office, their respective representatives, and the Office may meet, jointly or separately, with the neutral. A representative of **the employee and a representative of the [**an**]** employing office who has actual authority to agree to a settlement agreement on behalf or the **employee or the** employing office, **as the case may be,** must be present at the mediation or must be immediately accessible by telephone during the mediation.

(h) Conclusion of the Mediation Period and Notice. If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the Office shall provide the employee**,** and the employing office, and their representatives, with written notice that the mediation period has concluded. **The written notice to the employee will be sent by certified mail, return receipt requested and it [**at the same time, the office**]** will **also** notify the employee of his or her right to elect to file a complaint with the Office in accordance with Section 405 of the Act and Section 2.06 of these rules or to file a civil action pursuant to Section 408 of the Act and Section 2.11 of these rules.

(i) Independence of the Mediation Process and the Neutral. The Office will maintain the independence of the mediation process and the neutral. No individual, who is appointed by the Executive Director to mediate, may conduct or aid in a hearing conducted under Section 405 of the Act with respect to the same matter or shall be subject to subpoena or any other compulsory process with respect to the same matter.

(j) Confidentiality. Except as necessary to consult with the parties, their counsel or other designated representatives, the parties to the mediation, the neutral, and the Office shall not disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process. This rule shall not preclude a neutral from consulting with the Office, except that **when the covered employee is an employee of the Office** a neutral shall not consult with **any individual within the Office who might be** a party or witness **[**within the Office**]**. This rule shall also not preclude the Office from reporting statistical information to the **Senate and House of Representatives** that does not reveal the identity of the employees or employing offices involved in the mediation. All parties to the action and their representatives will be advised of the confidentiality requirements of this process and of the sanctions that might be imposed for violating these requirements.

(k) Employees of the office of the Architect of the Capitol and the Capitol Police. At any time during the mediation period, the Executive Director may recommend that the employee use the grievance procedures of the Architect of the Capitol and the Capitol Police in accordance with the procedures set forth in Section 203(m) of these rules.

§2.05 Election of Proceeding

(a) Pursuant to Section 404 of the Act, not later than 90 days after a covered employee receives notice of the end of mediation under Section 2.04(h) of these rules, but no sooner than 30 days after that date, the covered employee may either: File a complaint with the Office in accordance with Section 405 of the Act and the procedure set out in Section 2.06, below; or file a civil action in accordance with Section 408 of the Act and Section 2.11 below in the United States District Court for the district in which the employee is employed or for the District of Columbia.

(b) A covered employee who files a civil action pursuant to Section 2.11, may not thereafter file a complaint under Section 2.06 on the same matter.

§2.06 Complaints

(a) Who may file. An employee who has completed mediation under Section 2.04 may timely file a complaint with the Office.

(b) When to file. A complaint may be filed no sooner than 30 days after the date of receipt of the notice under Section 2.04(h), but no later than 90 days after that notice.

(c) Form and Contents. A complaint shall be written or typed on a complaint form available from the Office. All complaints shall be signed by the covered employee, or his or her representative, and shall contain the following information:

(1) the name, mailing address, and telephone number(s) of the complainant;

(2) the name, address and telephone number of the employing office against which the complaint is brought;

(3) the name(s) and title(s) of the individual(s) involved in the conduct that the employee claims is a violation of the Act;

(4) a description of the conduct being challenged, including the date(s) of the conduct;

(5) a brief description of why the complainant believes the challenged conduct is a violation of the Act and the Section(s) of the Act involved;

(6) a statement of the relief or remedy sought; and

(7) the name, address, and telephone number of the representative, if any, who will act on behalf of the complainant.

(d) Amendments. Amendments to the complaint may be permitted by the Office or, after assignment, by a Hearing Officer, on the following conditions: that all parties to the proceeding have adequate notice to prepare to meet the new allegations; that the amendments relate to the violations for which the employee has completed counseling and mediation; and that permitting such amendments will not unduly prejudice the rights of the employing office or other parties, unduly delay the completion of the hearing or otherwise interfere with or impede the proceedings.

(e) Service of Complaint. Upon receipt of a complaint or an amended complaint, the Office shall serve the employing office named in the complaint, or its designated representative, with a copy of the complaint or amended complaint and a copy of these rules. The Office shall include a service list containing the names and addresses of the parties and their designated representatives.

(f) Answer. Within 15 days after service of a copy of a complaint or an amended complaint, the respondent employing office shall file an answer with the Office and serve one copy on the complainant. The answer shall contain a statement of the position of the respondent employing office on each of the issues raised in the complaint, including admissions, denials, or explanations of each allegation made in the complaint and any other defenses to the complaint. Failure to raise a claim or defense in the answer shall not bar its submission later unless to do so would unduly prejudice the rights of the other party or unduly delay or otherwise interfere with or impede the proceedings.

§2.07 Appointment of the Hearing Officer

Upon the filing of a complaint, the Executive Director will appoint an independent Hearing Officer, who shall have the authority specified in Section**s 2.09 and** 7.01(b) below. The Hearing Officer shall not be the **counselor involved in or the** neutral who mediated the matter under Section**s 203 and** 2.04 of these rules.

*§2.08 Filing, Service, and Size Limitations of Motions, Briefs, Responses **and** Other Documents*

(a) Filing with the Office; Number. One original and three copies of all motions, briefs, responses, and other documents, must be filed, whenever required, with the Office or Hearing Officer. However, when a party aggrieved by the decision of a Hearing Officer files an appeal with the Board, one original and seven copies of both any appeal brief and any responses must be filed with the Office.

(b) Service. The parties shall serve on each other one copy of all motions, briefs**, responses and other documents** filed with the Office, other than the **request for counseling, the request for mediation and** complaint **[**which the Office will serve pursuant to Section 2.06(c) of these rules**]**. Service shall be made by mailing or by hand delivering a copy of the motion, brief, response or other document to each party, **or if represented, the party's representative,** on the service list previously provided by the Office. Each of these documents, **[**other than the Complaint**]** must be accompanied by a certificate of service specifying how, **[**and**]** when **and on whom** service was made. It shall be the duty of **each party [**all parties**]** to notify the Office and **all other parties [**one another**]** in writing of any changes in the names or addresses on the service list.

(c) Time limitations for response to motions or briefs and reply. Unless otherwise specified by the Hearing Officer or these rules, a party shall file a response to a motion or brief within 15 days of the service of the motion or brief upon the party. Any reply to such response shall be filed and served within 5 days of the service of the response. **Only with the Hearing Officer's advance approval may either party file additional responses or replies.**

(d) Size limitations. Except as otherwise specified by the Hearing Officer or these rules, no brief, motion, response, or supporting memorandum file with the Office shall exceed 35 pages, or 8,750 words, exclusive of **the table of contents, table of authorities and** attachments. The Board, the Office or Hearing Officer may waive, raise or reduce this limitation for good cause shown or on its own initiative. Briefs, motions, responses, and supporting memoranda shall be on standard letter-size paper (8½″11″).

§2.09 Dismissal of Complaints

(a) A Hearing Officer may, after notice and an opportunity to respond, dismiss any claim

that the Hearing Officer finds to be frivolous or that fails to state a claim upon which relief may be granted**, including, but not limited to, claims that were not advanced in counseling or mediation**.

(b) A Hearing Officer may, after notice and an opportunity to respond, dismiss a complaint because it fails to comply with the applicable time limits or other requirements under **the Act or** these rules.

(c) If any **complainant** [employee] fails to proceed with an action, the Hearing Officer may dismiss the complaint with prejudice.

(d) Appeal. A dismissal by the Hearing Officer made under Section **2.09(a)–(c) or** 7.16 of these rules may be subject to appeal before the Board if the aggrieved party files a timely petition for review under Section 8.01.

(e) Withdrawal of Complaint by Complainant. At any time **a complainant** [an employee] may withdraw his or her own complaint by filing a notice with the Office for transmittal to the Hearing Officer and by serving a copy on the employing office or representative. Any such withdrawal must be approved by the Executive Director.

§2.10 Confidentiality

Pursuant to section 416(c) of the Act, all proceedings and deliberations of Hearing Officers and the Board, including any related records, shall be confidential. A violation of the confidentiality requirements of the Act and these rules could result in the imposition of sanctions. Nothing in these rules shall prevent the Executive Director from reporting statistical information to the Senate and House of Representatives, so long as that statistical information does not reveal the identify of the employees involved or of employing offices that are the subject of a matter.

§2.11 Filing of Civil Action

(a) Filing. Section 404 of the Act provides that as an alternative to filing a complaint under Section **408 of the Act and Section** 2.06 **of these rules**, **a covered** employee who receives notice of the end of mediation pursuant to Section **403 of the Act and Section** 2.04(h) **of these rules** may elect to file a civil action in accordance with Section 408 of the Act in the United States district court for the district in which the employee is employed or for the District of Columbia.

(b) Time for filing. A covered employee may file such a civil action no earlier than 30 days after receipt of the notice under the Section 2.04(h), but no later than 90 days after that receipt.

Subpart C. [Reserved (part B—Section 210—ADA Public Services)]

Subpart D. [Reserved (Part C—Section 215—OSHA)]

Subpart E. [Reserved (Part D—Section 220—LMR)]

Subpart F. Discovery and Subpoenas

§6.01 Discovery

(a) Explanation. Discovery is the process by which a party may obtain **from another person, including a party,** [relevant] information, not privileged, **reasonably calculated to lead to the discovery of admissible evidence**, for the purpose of assisting that party in developing, preparing and presenting its case at the hearing. **This provision shall not be construed to permit any discovery, oral or written, to be taken from employees of the Office or the counselor(s), or the neutral(s) involved in counseling and mediation.**

(b) Office policy regarding discovery. It is the policy of the Office to encourage the early and voluntary exchange of relevant and material nonprivileged information between the parties, including the names and addresses of witnesses and copies of relevant and material documents, and to encourage Hearing Officers to develop procedures which allow for the greatest exchange of relevant and material information and which minimize the need for parties to formally request such information.

(c) Discovery availability. Pursuant to Section 405(e) of the Act, the Hearing Officer in his or her discretion may permit reasonable prehearing discovery. In exercising that discretion, the Hearing Officer may be guided by the Federal Rules of Civil Procedure.

(1) The Hearing Officer may authorize discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection or other purposes; physical and mental examinations; and requests for admission.

(2) The Hearing Office may make any order setting forth the forms and extend of discovery, including orders limiting the number of depositions, interrogatories, and requests for production of documents, and may also limit the length of depositions.

(3) The Hearing Officer may issue any other order to prevent discovery or disclosure of confidential or privileged materials or information, as well as hearing or trial preparation materials and any other information deemed not **discoverable** [disclosable] or to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

(d) Claims of privilege. Whenever a party withholds information otherwise discoverable under these rules of claiming that it is privileged or confidential or subject to protection as hearing or trial preparation materials, the party shall make the claim expressly and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

§6.02 Request for subpoena

(a) Authority to issue subpoenas. At the request of a party, a Hearing Officer may issue subpoenas for the attendance and testimony of witnesses and for the production of correspondence, books, papers, documents, or other records. The attendance of witnesses and the production of records may be required from any place within the United States. However, no subpoena may be issued for the attendance or testimony of an employee of the Office of Compliance.

(b) Request. A request for the issuance of a subpoena requiring the attendance and testimony of witnesses or the production of documents or other evidence under paragraph (a) above shall be submitted to the Hearing Officer at least 15 days in advance of the date scheduled for the commencement of the hearing. If the subpoena is sought as part of the discovery process, the request shall be submitted to the Hearing Officer at least 10 days in advance of the date set for the attendance of the witness at a deposition or the production of documents. **The Hearing Officer may waive the time limits stated above for good cause.**

(c) Forms and showing. Requests for subpoenas shall be submitted in writing to the Hearing Officer and shall specify with particularity the witness, correspondence, books, papers, documents, or other records desired and shall be supported by a showing of general relevance and reasonable scope.

(d) Rulings. The Hearing Officer shall promptly rule on the request.

§ 6.03 Service

Subpoenas shall be served in the manner provided under rule 45(b) of the Federal Rules of Civil Procedure. Service of a subpoena may be made by any person who is over 18 years of age and not a party to the proceeding. [Service may be made either:

[(a) In person,

[(b) By registered or certified mail, or express mail with return receipt, or

[(c) By delivery to a responsible person (named) at the residence or place of business (as appropriate) of the person to be served.]

*§ 6.04 **Proof** [Return] of service*

When service of a subpoena is effected, the person serving the subpoena shall certify [on the return of service] the date and the manner of service. **The party on whose behalf the subpoena was issued shall file the server's certification with the Hearing Officer.**

§ 6.05 Motion to quash

Any person against whom a subpoena is directed may file a motion to quash or limit the subpoena setting forth the reasons why the subpoena should not be complied with or why it should be limited in scope. This motion shall be filed with the Hearing Officer **before the time specified in the subpoena for compliance and not later than** [within] 10 days after service of the subpoena.

§ 6.06 Enforcement

(a) Objections and Requests for enforcement. If a person has been served with a subpoena pursuant to Section 6.03 but fails or refuses to comply with its terms or otherwise objects to it, the party or person objecting or the party seeking compliance may seek a ruling from the Hearing Officer. The request for a ruling **shall** [should] be submitted in writing to the Hearing Officer. However, it may be made orally on the record at the hearing at the Hearing Officer's discretion. The party seeking compliance shall present the **proof** [return] of service and, except where the witness was required to appear before the Hearing Officer, shall submit evidence, by affidavit or declaration, of the failure or refusal to obey the subpoena.

(b) Ruling by Hearing Officer. (1) The Hearing Officer shall promptly rule on the request for enforcement and/or the objection(s).

(2) On request of the objecting witness or any party, the Hearing officer shall, or on the Hearing Officer's own initiative the Hearing officer may, refer the ruling to the Board for review.

(c) Review by the Board. The Board may overrule, modify, remand or affirm the ruling of the Hearing Officer and in its discretion, may direct the General Counsel to apply in the name of the Office for an order from a United States district court to enforce the subpoena.

(d) Application to an appropriate court; civil contempt. If a person fails to comply with a subpoena, the Board may direct the General Counsel to apply, in the name of the Office, to an appropriate United States district court for an order requiring that person to appear before the Hearing Officer to give testimony or produce records. Any failure to obey a lawful order of the district court may be held by such court to be a civil contempt thereof.

Subpart G—Hearings

§ 7.01 The Hearing Officer

(a) Exercise of authority. The Hearing Officer may exercise authority as provided in paragraph (b) of this Section upon his or her own initiative or upon the motion of a party, as appropriate.

(b) Authority. Hearing Officers shall conduct fair and impartial hearings and take all necessary action to avoid undue delay in the disposition of all proceedings. They shall have all powers necessary to that end unless otherwise limited by law, including, but not limited to, the authority to:

(1) Administer oaths and affirmations;

(2) Rule on motions to disqualify designated representatives;

(3) Issue subpoenas in accordance with Section 6.02;

(4) Rule upon offers of proof and receive relevant evidence;

(5) Rule upon discovery issues as appropriate under Sections 6.01 to 6.06;

(6) Hold prehearing conferences for the settlement and simplification of issues;

(7) Convene a hearing as appropriate, regulate the course of the hearing, and maintain decorum **at** and exclude from the hearing any person who disrupts, or threatens to disrupt, that decorum;

(8) Exclude from the hearing any person, except any complainant, any part, the attorney or representative of any complainant or party, or any witness while testifying;

(9) Rule on all motions, witness and exhibit lists and proposed findings, including motions for summary judgment;

(10) Require the filing of briefs, memoranda of law and the presentation of oral argument with respect to any question of **fact or** law;

(11) Order the production of evidence and the appearance of witnesses;

(12) Impose sanctions as provided under Section 7.02 of these rules;

(13) File decisions on the issues presented at the hearing;

(14) Maintain the confidentiality of proceedings; and

(15) Waive or modify any procedural requirements of Sections 6 and 7 of these rules so long as permitted by the Act.

§ 7.02 Sanctions

The Hearing Officer may impose sanctions upon the parties, under, but not limited to, the circumstances set forth in this Section.

(a) Failure to comply with an order. When a party fails to comply with an order (including an order for the taking of a deposition, for the production of evidence within the party's control, or for production of witnesses), the Hearing Officer may:

(1) Draw an inference in favor of the requesting party on the issue related to the information sought;

(2) Stay further proceedings until the order is obeyed;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, **evidence** [testimony] relating to the information sought;

(4) Permit the requesting party to introduce secondary evidence concerning the information sought;

(5) Strike any part of the complaint, briefs, answer, or other submissions of the party failing to comply with **the order** [such request];

(6) Direct judgment against the non-complying party in whole or in part; **or**

(7) Order that the non-complying party, or the representative advising that party, pay all or part of the attorney's fees and reasonable expenses of the other party or parties or of the Office, caused by **such non-compliance** [the failure], unless the Hearing Officer or the Board finds that the failure was substantially justified or that other circumstances make an award of attorney's fees and/or expenses unjust.

(b) Failure to prosecute or defend. If a party fails to prosecute or defend a position, the Hearing Officer may dismiss the action with prejudice or rule for the **complainant** [petitioner].

(c) Failure to make timely filing. The Hearing Officer may refuse to consider any request, motion or other action that is not filed in a timely fashion in compliance with this Part.

§ 7.03 Disqualification of the Hearing Officer

(a) In the event that a Hearing Officer considers himself or herself disqualified, either because of personal bias or of an interest in the case or for some other disqualifying reason, he or she shall withdraw from the case, stating in writing or on the record the reasons for his or her withdrawal, and shall immediately notify the Office of the withdrawal.

(b) Any party may file a motion requesting that a Hearing Officer withdraw on the basis of personal bias or of an interest in the case or for some other disqualifying reason. This motion shall specifically set forth the reasons supporting the request and be filed as soon as the party has reason to believe that there is a basis for disqualification.

(c) The Hearing Officer shall **promptly** rule on the withdrawal motion. **If the motion is granted, the Executive Director will appoint another Hearing Officer within 5 days.** [If the motion is denied, the party requesting withdrawal may take the motion to the Executive Director. The motion to the Executive Director, together with a supporting brief, shall be filed within 5 days of service of the denial of the motion by the Hearing Officer. Upon receipt of the motion, the Executive Director will determine whether a response from the other party or parties is required, and if so, will fix by order the time for the filing of the response.] Any objection to the ruling of the [Executive Director] **Hearing Officer** on the withdrawal motion shall not be deemed waived by further participation in the hearing and may be the basis for an appeal to the Board from the decision of the Hearing Officer under Section 8.01 of these rules. Such objection will not stay the conduct of the hearing.

§ 7.04 Motions and Prehearing Conference

(a) Motions. When a case is before a Hearing Officer, motions of the parties shall be filed with the Hearing Officer and shall be in writing except for oral motions made on the record during the hearing. All written motions and any responses to them shall include a proposed order, where applicable. Only with the Hearing Officer's advance approval may either party file additional responses to the motion or to the response to the motion. Motions for extension of time will be granted only for good cause shown.

(b) Scheduling of the Prehearing Conference. Within 7 days after assignment, the Hearing Officer shall serve on the employee and the employing office and their designated representatives written notice setting forth the time, date, and place of the prehearing conference.

(c) Prehearing conference memoranda. The Hearing Officer may order each party to prepare a prehearing conference memorandum. That memorandum may include:

(1) The major factual contentions and legal issues that the party intends to raise at the hearing in short, successive, and numbered paragraphs, along with any proposed stipulations of fact or law. [For example, in a case of alleged unlawful discrimination, a complainant's statement of legal issues should include that party's statement of the appropriate prima facie case; an employing office's statement should include the alleged legitimate, non-discriminatory reason(s) that the employing office will articulate; and affirmative defenses, if any, which may be raised.]

(2) An estimate of the time necessary for presentation of the party's case;

(3) The specific relief, including the amount of monetary relief, that is being or will be requested;

(4) The names of potential witnesses for the party's case, except for potential rebuttal witnesses, and the purpose for which they will be called and a list of documents that the party is seeking from the opposing party, and, if discovery was permitted, the status of any pending request for discovery. (It is not necessary to list each document requested. Instead, the party may refer to the request for discovery.)

(5) A brief description of any other unresolved issues.

(d) At the prehearing conference, the Hearing Officer may discuss the subjects specified in paragraph (c) above and the manner in which the hearing will be conducted and proceed. In addition the Hearing Officer may explore settlement possibilities and consider how the factual and legal issues might be simplified and any other issues that might expedite the [early] resolution of the dispute. The Hearing Officer shall issue an order, which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of the parties. Such order, when entered, **shall** controls the course of the proceeding, subject to later modification by the Hearing Officer by his or her own **motion** [order] or upon proper request of a party for good cause shown.

§ 7.05 Scheduling the Hearing

(a) Date, time, and place of hearing. The Office shall issue the notice of hearing, which shall fix the date, time, and place of hearing. In no event, absent a postponement granted by the Office, will a hearing commence later than 60 days after the filing of the complaint.

(b) Motions for postponement or a continuance. Motions for postponement or for a continuance by either party shall be made in writing to the Office, shall set forth the reasons for the request, **and shall state whether** [and the position] the opposing party **consents to such** [on the] postponement. Such a motion may be granted upon a showing of good cause. In no event will a hearing commence later than 90 days after the filing of the complaint.

§ 7.06 Consolidation and Joinder of Cases

(a) Explanation. (1) Consolidation is when two or more parties have cases that might be treated as one because they contain identical or similar issues or in such other appropriate circumstances.

(2) Joinder is when one person has two or more claims pending and they are united for consideration. For example, where a single individual who has one appeal pending challenging a 30-day suspension and another appeal pending challenging a subsequent dismissal, joinder might be warranted.

(b) The Board, the Office, or a Hearing Officer may consolidate or join cases on their own initiative or on the motion of a party if

to do so would expedite processing of the cases and not adversely affect the interests of the parties, taking into account the confidentiality requirements of Section 416 of the Act.

§7.07 Conduct of Hearing; disqualification of representatives

(a) Pursuant to Section 405(d)(1) of the Act, the Hearing Officer **shall** [will] conduct the hearing in closed session on the record. Only the Hearing Officer, the parties and their representatives, and witnesses during the time they are testifying, **shall** [will] be permitted to attend, except that the Office may not be precluded from observing the hearings. The Hearing Officer, or a person designated by the Hearing Officer or the Executive Director, shall control the recording of the proceedings.

(b) The hearing **shall** [will] be conducted as an administrative proceeding. Witnesses shall testify under oath or affirmation. Except as specified in the Act and in these rules, the Hearing Officer **shall** [will] conduct the hearing, to the greatest extent practicable, in accordance with the principles and procedures in Sections 554 through 557 of title 5 of the United States Code.

(c) No later than the opening of the hearing, or as otherwise ordered by the Hearing Officer, each party shall submit to the Hearing Officer and to the opposing party typed lists of **the hearing exhibits and** the witnesses, **excluding** [except] rebuttal witnesses, expected to be called to testify.

(d) At the commencement of the hearing, or as otherwise ordered by the Hearing Officer, the Hearing Officer may consider any stipulations of facts and law pursuant to Section 7.10, take official notice of certain facts pursuant to Section 7.11, rule on objections made by the parties and hear the examination and cross-examination of witnesses. Each party will be expected to present his or her cases in a concise manner, limiting the testimony of witnesses and submission of documents or relevant matters.

(e) If the Hearing Officer concludes that a representative of an employee, witness, or an employing office has a conflict or interest, he or **she** may, after giving the representative an opportunity to respond, disqualify the representative. In that event, within the time limits **for hearing and decision** established by the Act, the affected party will have a reasonable time to retain other representation.

§7.08 Transcript

(a) Preparation. An accurate electronic or stenographic record of the hearing shall be kept and shall be the sole official record of the proceeding. The Office shall be responsible for the cost of transcription of the hearing. Upon request, a copy of a transcript of the hearing shall be provided to each party, provided, however, that such party has first agreed to maintain and respect the confidentiality of such transcript in accordance with the applicable rules prescribed by the Office or the Hearing Officer in order to effectuate Section 416(c) of the Act. Additional copies of the transcript shall be made available to a party **at the party's expense** [upon payment of costs]. Exceptions to the payment requirement may be granted for good cause shown. A motion for an exception shall be made in writing and accompanied by an affidavit or declaration setting forth the reasons for the request [and shall be granted upon a showing of good cause]. Requests for copies of transcripts shall be directed to the Office. The Office may, by agreement with the person making the request, make arrangements with the official hearing reporter for required services to be charged to the requester.

(b) Corrections. Corrections to the official transcript will be permitted. Motions for correction must be submitted within 10 days of service of the transcript upon the party. Corrections of the official transcript will be permitted [only when errors of substance are involved and] only upon approval of the Hearing Officer. The Hearing Officer may make corrections at any time with notice to the parties.

§7.09 Admissibility of Evidence

The Hearing Officer shall apply the Federal Rules of Evidence to the greatest extent practicable. These rules provide**, among other things,** that the Hearing Officer may exclude evidence if, among other things, it constitutes inadmissible hearsay or its probative value is substantially outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§7.10 Stipulations

The parties may stipulate as to any matter of fact. Such a stipulation will satisfy a party's burden of proving the fact alleged.

§7.11 Official Notice

The Hearing Officer on his or her motion or on motion of a party, may take official notice of a fact that is not subject to reasonable dispute because it is either: (a) A matter of common knowledge; or (b) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Official notice taken of any fact satisfies a party's burden of proving the fact noticed.

Where a decision, or part thereof, rests on the official notice of a material fact not appearing in the evidence in the record, the fact of official notice shall be so stated in the decision, and any party, upon timely request, shall be afforded an opportunity to show the contrary.

§7.12 Confidentiality

Pursuant to Section 416 of the Act, all proceedings and deliberations of Hearing Officers and the Board, including the transcripts of hearings and any related records, shall be confidential, except as specified in Section 416(d), (e), and (f) of the Act. All parties to the proceeding and their representatives, and witnesses who appear at the hearing, will be advised of the importance of confidentiality in this process and of their obligations, subject to sanctions, to maintain it.

§ 7.13 Immediate Board Review of a Ruling by a Hearing Officer

(a) Review strongly disfavored. Board review of a ruling by a hearing officer while a proceeding is ongoing (an ''interlocutory appeal'') is strongly disfavored. In general, a request for interlocutory review may go before the Board for consideration only if the Hearing Officer, on his or her own motion or by motion of the parties, determines that the issue presented is of such importance to the proceeding that it requires the Board's immediate attention.

(b) Standards for review. In determining whether to forward a request for interlocutory review to the Board, the Hearing Officer shall consider the following:

(1) Whether the ruling involves a significant question of law or policy about which there is substantial ground for difference of opinion; [and]

(2) Whether an immediate review of the Hearing Officer**'s** ruling by the Board will materially advance the completion of the proceeding; and

(3) whether denial of immediate review will cause undue harm to party or the public.

(c) Time for Filing. A motion by a party for interlocutory review of a ruling of the Hearing Officer shall be filed with the Hearing Officer within 5 days after service of the ruling upon the parties. The motion shall include arguments in support of both interlocutory review and the determination **requested** to be made by the Board upon review. Response, if any, shall be filed with the Hearing Officer within 3 days after service of the motion.

(d) Hearing Officer Action. If the conditions set forth in paragraph (b) above are met, the Hearing Officer **shall** [may] forward a request for interlocutory review to the Board for its immediate consideration. Any such submission shall explain the basis on which the Hearing Officer concluded that the standards **in paragraph (b)** [for introductory review] have been met.

(e) Grant of Interlocutory Review Within Board's Sole Discretion. The Board, in its sole discretion, may grant interlocutory review.

(f) Stay pending review. Unless otherwise directed by the Board, the stay of any proceedings during the pendency of either a request for interlocutory review or the review itself shall be within the discretion of the Hearing Officer, **provided that no stay shall serve to toll the time limits set forth in Section 405(d) of the Act.**

(g) Denial of Motion not Appealable; Mandamus. The grant or denial of a motion for a request for interlocutory review shall not be appealable. The Hearing Officer shall promptly bring a denial of such a motion, and the reasons therefor, to the attention of the Board. If, upon consideration of the motion and the reason for denial, the Board believes that interlocutory review is warranted, it may grant the review *sua sponte.* In addition, the Board may in its discretion, in extraordinary circumstances, entertain directly from a party a writ of mandamus to review a ruling of a Hearing Officer.

(h) Procedures before Board. Upon its acceptance of a ruling of the Hearing Officer for interlocutory review, the Board shall issue an order setting forth the procedures that will be followed in the conduct of that review.

(i) Review of a Final Decision. Denial of interlocutory review will not affect a party's right to challenge rulings, which are otherwise appealable, as part of an appeal to the Board **under Section 8.01** from the Hearing Officer's decision issued under Section 7.16 of these rules.

§ 7.14 ***Posthearing*** *Briefs*

(a) May be filed. The Hearing Officer may permit the parties to file posthearing briefs on the factual and the legal issues presented in the case.

(b) Length. No principal brief shall exceed 50 pages, or 12,500 words, and no reply brief 25 pages, or 6,250 words, exclusive of tables and pages limited only to quotations of statutes, rules, and the like. Motions to file extended briefs shall be granted only for good cause shown; the Hearing Officer may in his or her discretion also reduce the page limits. Briefs in excess of 10 pages shall include an index and a table of authorities.

(c) Format. Every brief must be easily readable. Briefs must have double spacing between each line of text, except for quoted texts and footnotes, which may be single-spaced.

§ 7.15 Closing the record ***of the hearing***

(a) **Except as provided in Section 7.14**, the record shall be closed at the conclusion of the hearing. However, when the Hearing Officer allows the parties to submit additional evidence previously identified for introduction, the Hearing Officer may allow an additional period before the conclusion of the hearing as is necessary for that purpose.

(b) Once the record is closed, no additional evidence or argument shall be accepted into the **hearing** record except upon a showing

that new and material evidence has become available that was not available despite due diligence prior to the closing of the record. However, the Hearing Officer shall make part of the record any motions for attorney fees, supporting documentation, and determinations thereon, and any approved correction to the transcript.

*§7.16 Official Record **of the Hearing***

[The transcript of testimony and the exhibits, together with all papers and motions filed in the proceeding, shall constitute the exclusive and official record.**]**

§7.16 Hearing Officer Decisions; Entry in Records of the Office

(a) Pursuant to Section 405(g) of the Act, no later than 90 days after the conclusion of the hearing, the Hearing Officer shall issue a written decision.

(b) Upon issuance, the decision and order of the Hearing Officer shall be entered into the records of the Office.

(c) The Office shall promptly provide a copy of the decision and order of the Hearing Officer to the parties.

(d) If there is no appeal of a decision and order of a Hearing officer, that decision becomes a final decision of the Office, which is subject to enforcement under Section 8.02**[**1**]** of these rules.

Subpart H—Proceedings before the Board

§8.01 Appeal to the Board
§8.02 Compliance with Final Decisions, Requests for Enforcement
§8.03 Judicial Review

§8.01 Appeal to the Board

(a) No later than 30 days after the entry of the decision **and order** of the Hearing Officer in the records of the Office, an aggrieved party may seek review of that decision **and order** by the Board by filing with the Office a petition for review by the Board. The appeal must be served on the opposing party or its representative.

(b) Unless otherwise ordered by the Board, within 21 days following the filing of a petition for review to the Board, the appellant shall file and serve a supporting brief **in accordance with Section 2.08 of these rules**. That brief shall identify with particularity those findings or conclusions in the decision **and order** that are challenged and shall refer specifically to the portions of the record and the provisions of statutes or rules that are alleged to support each assertion made on appeal.

Unless otherwise ordered by the Board, within 21 days following the service of the appellant's brief, the opposing party may file and serve a responsive brief. Unless otherwise ordered by the Board, within 10 days following the service of the appellee's responsive brief, the appellant may file and serve a reply brief.

(c) Upon the request of any party or upon its own order, the Board, in its discretion, may hold oral argument on an appeal.

(d) Upon appeal, the Board shall issue a written decision setting forth the reasons for its decision. The Board may affirm, reverse, modify or remand the decision **and order** of the Hearing Officer in whole or in part. **Where there is no remand the decision of the Board shall be entered in the records of the Office as the final decision of the Board and shall be subject to judicial review.**

(e) The Board may remand the matter to the Hearing Officer for further action or proceedings, including the reopening of the record for the taking of additional evidence. The Hearing Officer shall render a **decision or** report to the Board**, as ordered, at the conclusion of proceedings** on the remanded matters. Upon receipt of the **decision or** report, the Board shall determine whether the views of the parties on the content of the **decision or** report should be obtained in writing and, where necessary, shall fix by order the time for the submission of those views. A decision of the Board following completion of the remand shall be **entered in the records of the Office as** the final decision of the Board and shall be subject to judicial review.

(f) Pursuant to Section 406(c) of the Act, in conducting its review of the decision of a Hearing officer, the Board shall set aside a decision if it determines that the decision was:

(1) arbitrary, capricious, an abuse of discretion, otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

(g) In making determinations under paragraph (f), above, the Board shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(h) Record**[**: what constitutes**]**. The complaint and any amendments, notice of hearing, answer and any amendments, motions, rulings, orders, stipulations, exhibits, documentary evidence, **any portions of** depositions **admitted into evidence**, and the transcript of the hearing (together with any electronic recording of the hearing if the original reporting was performed electronically) together with the Hearing Officer's decision and the petition for review, **any response thereto, any reply to the response and any other pleadings [**and any cross-petition**]**, shall constitute the record in the case.

§8.02 Compliance with Final Decisions, Requests for Enforcement

(a) **Unless the Board has, in its discretion, stayed the final decision of the Office during the pendency of an appeal pursuant to Section 407 of the Act,** A party required to take any action under the terms of a final decision of the Office shall carry out its terms promptly, and shall within 30 days after the decision or order becomes final and goes into effect by its terms, provide the Office and all parties to the proceedings with a compliance report specifying the manner in which compliance with the provisions of the decision or order has been accomplished. If complete compliance has not been accomplished within 30 days, the party required to take any such action shall submit a compliance report specifying why compliance with any provision of the decision order has not yet been fully accomplished, the steps being taken to assure full compliance, and the anticipated date by which full compliance will be achieved.

(b) The Office may require additional reports as necessary.

(c) If the Office does not receive notice of compliance in accordance with paragraph (a) of this Section, the Office shall make inquiries to determine the status of compliance. If the Office cannot determine that full compliance is forthcoming, the Office shall report the failure to comply to the Board and recommend whether court enforcement of the decision should be sought.

(d) Any party may petition the Board for enforcement of a final decision of the Office or the Board. The petition shall specifically set forth the reasons why the petitioner believes enforcement is necessary.

(e) Upon receipt of a report of non-compliance or a petition for enforcement of a final decision, or as it otherwise determines, the Board may issue a notice to any person or party to show cause why the Board shall not seek judicial enforcement of its decision or order.

(f) Within the discretion of the Board, it may direct the General Counsel to petition the Court for enforcement **under Section 407(a)2** of a decision under Section 406(e) of the Act whenever the Board finds that a party has failed to comply with its decision and order.

§8.03 Judicial Review

Pursuant to Section 407 of the Act, a party aggrieved by a final decision of the Board under Section 406(e) in cases arising under Part A of Title II of the Act may file a petition for review with the United States Court of Appeals for the Federal Circuit. **The party filing a petition for review shall serve a copy on the opposing party or its representative.**

Subpart I—Other Matters of General Applicability

§9.01 Attorney's Fees and Costs
§9.02 Ex parte Communications
§9.03 Settlement Agreements
§9.04 Revocation, amendment or waiver of rules

§9.01 Attorney's Fees and Costs

(a) Request. No later than 20 days after the entry of a Hearing Officer's decision under Section 7.16 or after service of a Board decision by the Office, the complainant, if he or she is a prevailing party, may submit to the Hearing Officer who heard the case initially a **motion [**request**]** for the award of reasonable attorney's fees and costs, following the form specified in paragraph (b) below. The Board or the Hearing Officer, after giving the respondent an **opportunity [**appointment**]** to reply, shall rule on the **motion [**request**]**.

(b) Form of **Motion [**Request**]**. In addition to setting forth the legal and factual bases upon which the attorney's fees and/or costs are sought, a **motion for an award of [**request for**]** attorney's fees and/or costs shall be accompanied by:

(1) accurate and contemporaneous time records;

(2) a copy of the terms of the fee agreement (if any);

(3) the attorney's customary billing rate for similar work; and

(4) an itemization of costs related to the matter in question.

§9.02 [Reserved—Ex parte Communications]

*§9.03 **Informal Resolutions and** Settlement Agreements*

[(a) Application. This Section applies to formal settlement agreements between parties under Section 414 of the Act.**]**

(a) Informal Resolution. At any time before a covered employee files a complaint under Section 405, a covered employee and the employing office, on their own, may agree voluntarily and informally to resolve a dispute, so long as the resolution does not require a waiver of a covered employee's rights or the commitment by the employing office to an enforceable obligation.

(b) Formal Settlement Agreement. The parties may agree formally to settle all or part of a disputed matter **in accordance with Section 414 of the Act**. In that event, the agreement shall be in writing and submitted to the Executive Director for review and approval.

§9.04 Revocation, amendment or waiver of rules

(a) The Executive Director, subject to the approval of the Board, may revoke or amend these rules by publishing proposed changes in the Congressional Record and providing for a comment period of not less than 30 days. Following the comment period, any changes to the rules are final once they are published in the Congressional Record.

(b) The Board or a Hearing Officer may waive a procedural rule contained in this Part in an individual case for good cause shown if application of the rule is not required by law.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1880. A letter from the Deputy Associate Director for Compliance, Department of the Interior, transmitting notification of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Resources.

1881. A letter from the Deputy Associate Director for Compliance, Department of the Interior, transmitting notification of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Resources.

1882. A letter from the Director, Office of Government Relations, Smithsonian Institution, transmitting a copy of the National Society of the Daughters of the American Revolution's ''Annual Proceedings of the One Hundred Fourth Continental Congress'', pursuant to 36 U.S.C. 18b; to the Committee on the Judiciary.

1883. A letter from the Executive Director, Office of Compliance, transmitting notice of adopted rules governing the procedures of the Office for printing in the CONGRESSIONAL RECORD, pursuant to Public Law 104–1, section 303(b) (109 Stat. 28); jointly, to the Committees on House Oversight and Economic and Educational Opportunities.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. YOUNG of Alaska: Committee on Resources. H.R. 2726. A bill to make certain technical corrections in laws relating to native Americans, and for other purposes; with an amendment (Rept. 104–444). Referred to the Committee of the Whole House on the State of the Union.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 2143: Mr. FILNER.

H.J. Res. 97: Mr. WYDEN.